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2 NO. 93CI-04806 JEFFERSON CIRCUIT COURT  
3 DIVISION 10

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5 ROBERT L. MADDOX, et al PLAINTIFFS

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8  
9 VS DEPOSITION FOR THE PLAINTIFFS

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12 UNKNOWN DEFENDANT, by His  
13 Attorney J. Fox DeMoisey DEFENDANT

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16  
17 DEPONENT: Merrell Williams, Jr., Ph.D.  
18 (October 5, 1993)

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23  
24 Nancy L. Nunnolley, RPR  
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Louisville, Kentucky 40299  
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3 APPEARANCES:  
4 For the Plaintiffs, Wyatt, Tarrant & Combs  
5 John T. Ballantine, Esquire  
6 Ogden, Newell & Welch  
7 1200 One Riverfront Plaza  
8 Louisville, Kentucky 40202  
9 ALSO PRESENT: Walter M. Jones

10  
11 For the Plaintiff, Brown & Williamson  
12 Gordon A. Smith, Esquire  
13 King & Spalding  
14 191 Peachtree Street  
15 Atlanta, Georgia 30303-1763

16  
17 For the Defendant  
18 J. Fox DeMoisey, Esquire  
19 1210 Sparks Building  
20 Louisville, Kentucky 40202  
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4 The deposition of MERRELL WILLIAMS, JR.,  
5 Ph.D., taken in the offices of Ogden, Newell & Welch,  
6 1200 One Riverfront Plaza, Louisville, Kentucky, on  
7 Wednesday, October 6, 1993, at about the hour of 9:40  
8 A.M., said deposition being taken pursuant to Notice  
9 for use in accordance with the Kentucky Rules of Civil  
10 Procedure.

11  
12 MERRELL WILLIAMS, JR., Ph.D., after first  
13 being duly sworn, deposed and said as follows:

14 EXAMINATION BY MR. JOHN T. BALLANTINE

15 MR. BALLANTINE: State your name for the record,  
16 please.

17 MR. WILLIAMS: MERRELL WILLIAMS, JR. And that's  
18 doctor. I have a Ph.D. I'd like that on the record.

19 Q. How do you spell Merrell?

20 A. Mer-rell.

21 Q. Preliminarily I want to address this comment  
22 and question to you and your attorney. In the  
23 procedural status in which this case started and has  
24 proceeded to this point, the summons with the attached  
25 copy of the complaint and the exhibits is in my  
possession. I took possession pending the initial  
resolution of the problems presented by the motion for  
restraining order and what-have-you. In light of where

4  
5 we are at this point, will you accept my delivery of  
6 the summons and complaint to you and your client as  
7 being service or will you insist on the formality of  
8 the rules?

9 MR. DeMOISEY: No. We will accept service.

10 MR. BALLANTINE: Okay. Thank you.

11 MR. DeMOISEY: I actually thought we had  
12 already accepted service. But that's fine.

13 MR. BALLANTINE: I think the -- under the status  
14 there's no question of jurisdiction, but I just wanted  
15 to get that procedural thing behind me.

16 MR. DeMOISEY: That's no problem.

17 MR. BALLANTINE: Second as a preliminary I want to  
18 just state for the record that a little after nine we  
19 were given the message that Mr. DeMoisey's office had  
20 called and said that they were running late but were on  
21 their way, and they arrived at our office at sometime  
22 between 9:35 and 9:40. Now, what is your present  
23 address, Mr. Williams?

24 A. [DELETED]

25 Q. I ask the court reporter to mark this  
document that I'm handing her as Deposition Exhibit 1.

(WILLIAMS DEPOSITION EXHIBIT NO. 1 WAS MARKED)

Q. Sir, Deposition Exhibit 1 is a copy of the

1 restraining order that was issued by Judge Wine in this  
2 case. On or about 4:35 P.M. on September 29 did you  
3 receive a copy of that restraining order from a man you  
4 may not know or he may not have identified himself?  
5 I'll represent to you, counsel and the court that it  
6 was a Steven J. Goldstein retained by us for purposes  
7 of delivering that restraining order. Did you receive  
8 a copy of that at or about 4:35 P.M. on September 29?

9 A. Correct. Yes.

10 Q. Mark that two.

11 (WILLIAMS DEPOSITION EXHIBIT NO. 2 WAS MARKED)

12 Q. I've had the court reporter mark for  
13 identification Williams Deposition Exhibit 2 which is a  
14 photocopy of the notice to take deposition and request  
15 for production of documents and things, which I served  
16 upon your lawyer at his office on or about September  
17 30. My recollection is it was right around noon time or  
18 shortly before or shortly after. Have you seen from  
19 your lawyer a copy of that deposition notice relating  
20 to your deposition that was originally scheduled for  
21 yesterday?

22 A. (Examining document).

23 MR. DeMOISEY: (Nods head affirmatively).

24 A. Yes.

25 Q. Sir?

1 A. Yes.

2 Q. Move that Deposition Exhibits 1 and 2 be  
3 filed as exhibits to this deposition.

4 MR. DeMOISEY: No objection.

5 Q. Handling you copies of both Deposition Exhibit  
6 1 and Deposition Exhibit 2 I'll ask you, sir, if you  
7 have brought with you to this deposition any of the  
8 materials referred to in the restraining order and/or  
9 in the deposition notice?

10 A. Consult with counsel. No.

11 Q. Why not?

12 MR. DeMOISEY: At that point I would like to  
13 answer on behalf of my client. As we have previously  
14 discussed there is an outstanding allegation, although  
15 somewhat unspecified, that the — certainly at least  
16 the law firm, I don't know whether Brown & Williamson  
17 has joined in the accusation at this point or not, that  
18 my client may have committed a criminal act in the  
19 circumstances of this case. Being unspecified as to  
20 exactly what criminal acts other than, best I can tell,  
21 theft and conversion, it is felt that to produce any  
22 documents at this time or to give any testimony about  
23 any of the actions taken at this time would be subject  
24 to the Fifth Amendment right to remain silent.

25 Q. The pending question is why you have not

1 produced in response to the deposition notice the  
2 documents identified in the restraining order which was  
3 a copy — which was attached to that notice. And I'll  
4 ask the question again. I understand your counsel's  
5 statement. And if you choose to assert the Fifth  
6 Amendment privilege, I certainly will respect your  
7 doing so, but I need to have you do it. Do you — why  
8 do you not have those materials with you?

9 A. I assert the Fifth Amendment privilege to  
10 remain silent.

11 Q. All right.

12 MR. SMITH: Let me state on the record as to  
13 Mr. DeMoisey's statement or objection or whatever  
14 exactly it was, that the question did not call for  
15 incriminatory testimony in that the existence of  
16 documents has been stated by counsel himself in letters  
17 to the Wyatt law firm. The existence of documents that  
18 have been removed by your client not being at issue,  
19 there is no Fifth Amendment issue to be raised there.  
20 And I would ask counsel to instruct his client to  
21 answer that question.

22 MR. BALLANTINE: And I will add to that at the  
23 risk of one-twining here, and we certainly don't intend  
24 to do that throughout, but because of the importance —

25 MR. DeMOISEY: Just when necessary.

1 MR. BALLANTINE: That's right. Because of the  
2 importance of this issue, if you would want time to  
3 consult with your client in relation to that particular  
4 point, we'd be willing to adjourn the deposition,  
5 remove the court reporter and us from this room to give  
6 you a chance to talk about that particular aspect of  
7 the assertion of the privilege. If you say 'no, we've  
8 already talked about that', we'll move on. But I don't  
9 want this record to show that we're stating our grounds  
10 and not giving you a chance to consider them with your  
11 client if you choose to do so.

12 MR. DeMOISEY: I appreciate the opportunity  
13 to talk with my client, but obviously this has been a  
14 situation that has been at least generally discussed,  
15 if not specifically discussed, both on and off the  
16 record at various arguments. We are aware of precisely  
17 what counsel has brought up and don't feel that it is,  
18 all due respect to counsel, that it is applicable to  
19 the circumstances as we understand them to be. So we  
20 don't need additional time to discuss it.  
21 Unfortunately, that was part of one of the reasons we  
22 were running a few minutes late, was just to go back  
23 over these circumstances again to the limited extent  
24 that I could talk with him.

25 Q. To complete the record then, sir, I will ask

1 you, do you continue to assert your Fifth Amendment  
2 privilege having heard this conversation among counsel?  
3 A. I do, sir.  
4 Q. All right. Do you -- strike that. Are there  
5 in existence subject to your possession, custody or  
6 control any of the materials defined in the deposition  
7 notice or the restraining order?  
8 A. I respectfully assert my Fifth Amendment  
9 privilege to remain silent.  
10 Q. Did you understand from my question that  
11 within your possession, custody or control included --  
12 and your assertion of the privilege included the  
13 possession, custody or control of your lawyer or any  
14 such materials that you had turned over to him? All  
15 I'm asking you is that you've asserted your privilege  
16 as to whether they exist in your possession, custody or  
17 control, and you've asserted your privilege. I want to  
18 make sure that you understand that if, in fact, the  
19 custody, possession or control of those materials  
20 defined in these two documents, Exhibits 1 and 2, have  
21 been turned over to your counsel, that that would be  
22 embraced within the scope of my question. You did  
23 understand that when you asserted your privilege?  
24 A. I assert --  
25 MR. DEMOISEY: Wait a minute. Hold on. I

1 would object to that question. It gets into  
2 attorney-client privilege, communications between  
3 myself and Mr. Williams. I instruct the witness not to  
4 answer.  
5 MR. BALLANTINE: As to whether he understood that  
6 under his possession, custody and control included the  
7 possibility of their being in your possession?  
8 MR. DEMOISEY: Whether he understood that or  
9 not, and I do not want to frame that as to give any  
10 indication as to what a possible answer might be, that  
11 discussion would have taken place between counsel and  
12 client. And his mental impressions as to what the  
13 conclusion of that discussion may or may not have been  
14 would be within the attorney-client privilege.  
15 Q. Sir, have you turned over to your lawyer any  
16 of the materials defined in Deposition Exhibits 1 and  
17 2?  
18 MR. DEMOISEY: Again, I would instruct the  
19 witness not to answer as that would be communications  
20 between counsel and attorney protected by the  
21 attorney-client privilege.  
22 Q. This question will require just a yes or a no  
23 or the assertion of the privilege but not any  
24 substance. Have you told your attorney the whereabouts  
25 of any materials described in Deposition Exhibits 1 or

1 2?  
2 A. I would assert the privilege and remain  
3 silent.  
4 Q. Which privilege?  
5 A. The Fifth Amendment.  
6 MR. DEMOISEY: Also add that it's within the  
7 attorney-client privilege likewise.  
8 Q. Sir, I hand you a copy of the document which  
9 was attached to the complaint which is in front of you  
10 now that was marked as an exhibit to the complaint as  
11 Plaintiffs' Exhibit 1 styled firm -- Wyatt, Tarrant &  
12 Combs Firm Policy Confidentiality of Information that  
13 has the signature line blocked out, because at the  
14 stage in which that document was attached to the court  
15 proceedings your attorney had declined to identify  
16 you. Do you recognize that as a copy of the document  
17 which you signed during your employment with the Wyatt  
18 firm?  
19 A. I do not.  
20 (COMMENTS OFF THE RECORD)  
21 MR. DEMOISEY: Mr. Ballantine, my client's  
22 asked me for a moment to confer on this document and a  
23 question about it.  
24 MR. BALLANTINE: I have a -- in the context of  
25 this case I have a real problem about --

1 MR. DEMOISEY: Just one --  
2 MR. BALLANTINE: -- having periodic conferences.  
3 I will represent to you and to your client that this is  
4 a photocopy of a document on which we blocked out, and  
5 I have my secretary right now looking for the one that  
6 has the photocopy of the signature, but because of the  
7 -- your declining the request to identify who your  
8 client was at the time this action was commenced, I  
9 blocked out that signature so that there would be no  
10 violation of that request. I believe it to be -- I  
11 believe the signature to be that of a Mr. Williams,  
12 although I have to concede as I read it, it did not  
13 seem overly legible to me. But I have and will present  
14 before this deposition is adjourned a copy that has a  
15 signature that appears to be a signature of Mr.  
16 Williams, Doctor Williams on that.  
17 A. Does this have a date, sir?  
18 Q. Yes, there is a date on the copy that I'm  
19 looking for and my secretary is looking for.  
20 MR. DEMOISEY: As I understand it, I don't  
21 know that he's saying that it is or isn't something  
22 that he may have signed. He just didn't recognize  
23 that.  
24 Q. I understand that. That's why I want to get  
25 around that particular problem. We'll move on while

1 she and I are looking for the one that has the  
2 photocopy of the signature. During your employment  
3 with the Wyatt firm did you sign a document similar to  
4 the one that is Complaint Plaintiffs' Exhibit 17?

5 MR. DeMOISEY: (Nods head affirmatively).

6 A. Yes.

7 Q. Let's get that marked for deposition purposes  
8 as Deposition Exhibit 3.

9 (WILLIAMS DEPOSITION EXHIBIT NO. 3 WAS MARKED)

10 A. But I emphatically state I do not recognize  
11 that document.

12 Q. I now hand you...

13 (COMMENTS OFF THE RECORD)

14 Q. While that's being processed, and I'll come  
15 back to it, I'll get the court reporter to mark this  
16 next document as Deposition Exhibit 4.

17 (WILLIAMS DEPOSITION EXHIBIT NO. 4 WAS MARKED)

18 Q. Sir, I will hand you in a moment the document  
19 now marked Williams Deposition Exhibit No. 4, a  
20 photocopy of what is Plaintiffs' Exhibit 2 to the  
21 complaint in this action. It is styled Nondisclosure  
22 Agreement. It does not have dates typed in, nor did my  
23 copy. It has in various brackets for confidentiality  
24 purposes at that time a bracket indicating client name  
25 or general categories of topics. And I will represent

1 to you that the client name that appeared in those  
2 spaces where that legend appears, that it was Brown &  
3 Williamson Tobacco Corporation. I cannot represent to  
4 you at this moment what the general categories were.  
5 But my question to you, sir, is looking at Williams  
6 Deposition Exhibit No. 4, during your period of  
7 employment with Wyatt, did you sign a document similar,  
8 if not identical, similar in form and content of that  
9 document?

10 A. I would have to read this whole document.

11 Q. Do so, please.

12 MR. DeMOISEY: Go ahead and read it.

13 A. Yeah.

14 MR. DeMOISEY: While he's reading it, I will  
15 object to the form of the question. If you wanted to  
16 identify the agreement that was in place at the time,  
17 if there was one, I think it's incumbent to produce the  
18 one that is covering this situation as opposed to a  
19 draft of a document. I think he's entitled to see a  
20 copy of the actual one, if there is one, that's  
21 applicable to this circumstance.

22 A. Sir, I do not recognize this document as any  
23 one that I have ever signed.

24 Q. Let me hear the answer.

25 (THE LAST ANSWER WAS READ BY THE REPORTER)

1 Q. All right. Did you during your employment  
2 with Wyatt sign any document similar to that relating  
3 specifically to Brown & Williamson?

4 A. I would have to consult with my counsel on  
5 that. That question is similar to that document, and I  
6 am not certain as to that similarity between any  
7 document that I may or may not have signed. I would  
8 have to compare one document with another document in  
9 order to give you an answer.

10 Q. For purposes of my questions in this  
11 deposition, if you have trouble understanding my  
12 question, then I ask that you ask me to clarify it, not  
13 your counsel. I believe that I have a right in this  
14 deposition to ask you to answer my questions without  
15 interrupting for a conference with your counsel. This  
16 is a deposition, not a Congressional hearing. And,  
17 therefore, if you need clarification, please address  
18 your request for clarification to me, not to your  
19 counsel.

20 MR. DeMOISEY: If I may respond to that, and  
21 with all due respect, Mr. Ballantine, certainly  
22 generally I would not agree with that position, but  
23 specifically in this circumstance as complex and  
24 unusual as it is, I think it's already a big enough  
25 problem in terms of my representation of Mr. Williams

1 to be blocked away from a lot of necessary  
2 information. It is — causes even a bigger problem  
3 where my client has a question concerning the law not  
4 to be able to consult. So I would respectfully have to  
5 disagree. I believe that if my client wishes to  
6 discuss a question with me, he has a right to do so,  
7 and if we can't be permitted to do that, then I'm  
8 afraid we're going to have to ask Judge Wines to  
9 intercede on that point.

10 A. May I ask counsel —

11 Q. Certainly.

12 A. — a question of clarification? On page one  
13 of a nondisclosure agreement, general categories of  
14 topics, what are these general categories of topics to  
15 which you are referring?

16 Q. I will answer that question with more  
17 specific questions to you as soon as my secretary  
18 brings me the copy of the document which was blocked  
19 out for purposes of filing with the complaint. But  
20 when I get those copies, we'll proceed with Deposition  
21 Exhibit 4. Going back to Deposition Exhibit 3 which  
22 has no signature line and no date on it, I want to get  
23 the reporter to mark this copy as deposition Exhibit  
24 3A.

25 (WILLIAMS DEPOSITION EXHIBIT NO. 3A WAS MARKED)

1 A. Is this it? (Examining document).  
 2 Q. Looking at the second page of deposition  
 3 Exhibit 3A, does that appear to you to be your  
 4 signature?  
 5 A. This is not my signature that I recognize,  
 6 and I don't recognize any date 2-18-90, at which I  
 7 would have been a -- a signature to any statement such  
 8 as this. I don't recognize the document, and I  
 9 certainly don't recognize the signature as I normally  
 10 sign. Now, and I certainly don't recognize this date.  
 11 That would have been February 18th, 1990. I don't  
 12 recognize it.

13 MR. DeMOISEY: If you don't, you don't.

14 Q. What is there about the date of February 18,  
 15 1990, that enables you to say "I don't recognize that  
 16 date"?

17 A. I think it's an obscure date in terms of the  
 18 time I was employed at Wyatt, Tarrant & Combé. This is  
 19 not a time that I recognize. That's basically the  
 20 answer. I don't recognize the signature, and I don't  
 21 recognize the date or why this would have been effected  
 22 on that particular date.

23 Q. Let's take these topics one at a time. As to  
 24 the signature, are you saying in your answer that you  
 25 don't recognize it, that you are denying that it is

1 yours?

2 A. I do not recognize it as my signature. That  
 3 is what I'm saying.

4 Q. Well, I understood that to be your answer.  
 5 But I need to get more specific as to whether you're  
 6 saying "it is not my signature" or "I am unable to say  
 7 whether it is or is not my signature".

8 A. It does not appear to be my signature, Mr.  
 9 Ballantine. As a copy -- there are two things that are  
 10 confusing. One, the rather large signature and also  
 11 the date. I can't put a place. I can't put a time on  
 12 it, and I'm not absolutely sure that that is my  
 13 signature.

14 Q. Do you have with you your driver's license?

15 A. Yes, I do.

16 Q. May I see it?

17 A. (Handing document to Mr. Ballantine).

18 Q. (Examining document). I'm going to ask leave  
 19 of the witness and counsel for long enough period for  
 20 me to make photocopies of this driver's license to make  
 21 it an exhibit to this deposition. Obviously I'll  
 22 return the original of the driver's license to the  
 23 witness. But in light of this testimony I need to  
 24 complete the record as to this signature issue as best  
 25 we can at this moment.

(COMMENTS OFF THE RECORD)

1 MR. DeMOISEY: Let me make -- if I may  
 2 interrupt a second here. My understanding of the  
 3 purpose of this deposition was to address issues  
 4 concerning documents and the locality of documents and  
 5 things of that nature, vis-a-vis the restraining  
 6 order. I'm a little bit at a loss as to why we're now  
 7 getting into contracts and statements and driver's  
 8 licenses and what-not when that was not my  
 9 understanding of the scope of this deposition. I  
 10 thought that you had represented to the court that the  
 11 deposition was to be pertinent as to location and  
 12 existence and nonexistence and things of that nature as  
 13 to the privileged and confidential documents and  
 14 information claimed by the law firm and the client.  
 15 This is beginning to look more like a discovery  
 16 deposition across the board as opposed to those  
 17 issues.

18 MR. BALLANTINE: No. We need to establish,  
 19 particularly in light of the witness's assertion of the  
 20 Fifth Amendment privilege in some previous answers, the  
 21 circumstances relating to the documents and information  
 22 which is in issue in this lawsuit. You're quite right  
 23 that the primary purpose is to get at the documents and  
 24 their location and what has happened to them since this

1 man ceased being employed at Wyatt. As a necessary  
 2 component of that for the purposes of the court's  
 3 evaluation, we need to set -- lay the groundwork for  
 4 the court to evaluate whether, A, the documents were in  
 5 his possession or not. I started into that, and there  
 6 have been some assertions of privilege relating to  
 7 that. But the documents and the circumstances under  
 8 which this man had access to them is certainly relevant  
 9 to the question of where they started and where they  
 10 are now. And there's no question I'm planning to get  
 11 into where they are now when we get to that point. But  
 12 I needed to establish if I could through this witness  
 13 that he was employed at Wyatt and that he did or did  
 14 not sign some of these agreements. We've gotten up to  
 15 this point on some of those issues. But I think that  
 16 is highly relevant for purposes of both this action and  
 17 the original action which you filed. Let the record  
 18 reflect --

19 MR. DeMOISEY: It may.

20 MR. BALLANTINE: Let me interrupt and just return  
 21 the witness's driver's license.

22 MR. DeMOISEY: I don't disagree that some of  
 23 these questions may be relevant in the lawsuit as a  
 24 whole. But my understanding of what this deposition  
 25 today was about was simply to ascertain the existence

1 and/or whereabouts and/or possession of information  
 2 and/or documents concerning the restraining order, not  
 3 how under the context of any documents were gotten or  
 4 not gotten or any of those other things that get into  
 5 other issues in this case. It was simply to ascertain,  
 6 as I think Mr. Smith eloquently pointed out and wanted  
 7 to know the locations of various things and existence  
 8 of various things. And I thought that's exactly the  
 9 limitation that you represented to the court that the  
 10 need for this deposition. I don't think the court was  
 11 under the impression that we were going to get into  
 12 discovery issues on other matters. I mean, quite  
 13 frankly, we have not even filed an answer yet, not even  
 14 due one. So I'm going to have to object to going  
 15 outside the issues that you have presented to the court  
 16 as the need for this deposition.

17 MR. BALLANTINE: Well, I hear what you're saying.  
 18 If you're instructing him not to answer, do so. If  
 19 not, let him answer subject to that objection. I can  
 20 assure you I'm not planning to conduct a broad-ranging  
 21 discovery deposition in the ordinary context. But I do  
 22 think I'm entitled to inquire into these. Now -

23 MR. DeMOISEY: Well - I'm sorry.

24 MR. BALLANTINE: I think there is a pending  
 25 question, but in order to put it in framework, if you

1 want to state your objection and instruct, okay. We'll  
 2 move on. But to put the - a pending question, what is  
 3 there about the date of February 18, 1990, that is a  
 4 date that you don't recognize in relation to your  
 5 employment with Wyatt?

6 A. I -

7 MR. DeMOISEY: Let me - with that question  
 8 pending, that it would be my position to object. I  
 9 won't restate it again. It would be the same  
 10 objection. I don't believe that that's within the  
 11 scope of what the plaintiffs have represented to the  
 12 court the need for this expedited deposition is. And I  
 13 would instruct the witness not to answer.

14 Q. Do you accept your counsel's instruction and  
 15 decline to answer for that reason?

16 A. Yes.

17 Q. In order to complete the record on this, I  
 18 want to hand you now Deposition 4, and I'll get the  
 19 reporter to mark this as Deposition Exhibit 4 styled  
 20 nondisclosure agreement.

21 (WILLIAMS DEPOSITION EXHIBIT NO. 4 WAS MARKED)

22 Q. Looking at 4, which is a photocopy of an  
 23 unsigned nondisclosure agreement, do you recognize that  
 24 as a document which you signed in connection with your  
 25 employment at Wyatt?

1 MR. DeMOISEY: Let me interpose an objection  
 2 two-fold. Number one, I will restate the objection I  
 3 had to the previous questions in terms of this is  
 4 outside the scope of what was represented to the trial  
 5 court to be the need for an expedited deposition,  
 6 number one. Number two, this nondisclosure agreement  
 7 is unsigned, undated, and I don't believe it's a proper  
 8 question to ask him about a document, whether he signed  
 9 it or not, when the document that is purported to be  
 10 the document he signed, I guess, is not produced. So I  
 11 think it is an improper question, and on the basis of  
 12 those two objections I instruct the witness not to  
 13 answer.

14 Q. Do you accept your counsel's advice and  
 15 decline to answer?

16 A. Yes, sir, I do.

17 Q. In the interest of economy of everyone  
 18 involved, economy of time, can we have two agreements  
 19 with reference to the processing of this deposition?  
 20 One would be that I need not formally ask the witness  
 21 if he accepts your advice and declines to answer on the  
 22 assumption that he will accept your advice since you  
 23 are his lawyer. And I need not ask that question each  
 24 time as to any instruction you give him not to answer.

25 MR. DeMOISEY: I don't have a problem with

1 doing that if we can add on the other proviso that just  
 2 on the off chance that he might have a problem with my  
 3 advice, that at least could counsel that for a second,  
 4 because it is possible that he may not agree. But why  
 5 don't we do it this way. Unless otherwise noted by the  
 6 witness, we don't need to go through the necessity of  
 7 asking that question.

8 MR. BALLANTINE: That's fine enough. The second  
 9 agreement I would like to ask, so that either at the  
 10 end or question by question I don't need to - I don't  
 11 think under the current rules I even need to certify a  
 12 question or move for an order compelling at this time.  
 13 But can we agree that as to any answers - excuse me,  
 14 any questions he declines to answer on whatever basis,  
 15 advice of counsel, privilege or whatever, that I have a  
 16 standing objection to his refusal to answer? And then  
 17 we will formalize the motion to compel at a later time  
 18 without my going through the rubric each time?

19 MR. DeMOISEY: I don't have a problem with  
 20 that. The only thing I would ask is that without  
 21 knowing at this point that that list could be long, it  
 22 could be short, if there's going to be a particular  
 23 motion to compel based on whatever reason he does not  
 24 answer, that we would ask that there be a listing of  
 25 those particular questions so we're not faced with

1 perhaps having to deal with a multitude of questions  
2 when, in fact, you're only concerned about, say, five  
3 or something. So if you could delineate them.

4 MR. BALLANTINE: That's quite agreeable.

5 MR. DeMOISEY: Okay.

6 MR. BALLANTINE: I figure after this is all over  
7 we're going to have to formally present to the court a  
8 motion referring question by question that we want  
9 compelled answered, and we may waive some of those.

10 MR. DeMOISEY: Just as long as we know what  
11 you're talking about.

12 Q. Exactly. Again, to complete the record on  
13 this point, I now hand you - oh, I'm going to get the  
14 reporter to mark this first as Deposition Exhibit 3B.

15 (WILLIAMS DEPOSITION EXHIBIT NO. 3B WAS MARKED)

16 Q. I had my secretary make photocopies of your  
17 driver's license. Is Deposition Exhibit 3B a photocopy  
18 of the front of your driver's license?

19 A. (Examining documents). Yes.

20 Q. And in a - wait before you put your original  
21 away. Down in the lower portion of the deposition -  
22 excuse me - lower portion of the exhibit or of the  
23 photocopy of the driver's license itself, is that your  
24 signature that appears in the photocopy?

25 A. Yes, it is.

1 Q. Okay. One last - I won't say last. Another  
2 logistical matter that I'd like agreement on is that as  
3 to each exhibit that I interrogate the witness about I  
4 don't have to move that it be filed with the  
5 deposition. All exhibits about which he will testify  
6 or not testify will be attached to the transcript of  
7 the deposition without going through any formalities -

8 MR. DeMOISEY: That -

9 MR. BALLANTINE: - relating to that.

10 MR. DeMOISEY: That would be fine.

11 Q. Sir, do you recall that your attorney sent a  
12 letter to the Wyatt law firm with which he transmitted  
13 a box of material? He labeled them I believe documents  
14 in the letter. But do you recall that he did transmit  
15 to the Wyatt law firm a box of documents and perhaps  
16 other things that you had turned over to him on his  
17 advice for purposes of being returned to the Wyatt law  
18 firm?

19 A. My perception of this question is that it is  
20 within the parameters of attorney-client privilege.  
21 I'm not certain. I would like to consult with  
22 counsel.

23 Q. Let me make it perhaps simple for you. Look  
24 at the complaint that is before you. And in one of the  
25 early paragraphs I quote a paragraph from the letter of

1 Mr. DeMolsey to the Wyatt law firm relating to the  
2 documents in issue in this case. There it is. It's in  
3 paragraph 11 of the complaint. And this indented block  
4 at page five within paragraph eleven quotes the letter  
5 from your lawyer to the Wyatt law firm. Do you recall  
6 that what is set out in that paragraph did occur and  
7 that he transmitted with that letter to the Wyatt law  
8 firm a box of materials sealed that you had turned over  
9 to him?

10 A. I'm not - I would like a clarification of  
11 this.

12 Q. All right.

13 A. Do you have a copy of any letter that might  
14 show this quote to be accurate?

15 Q. I direct your attention to the third literary  
16 paragraph of this letter of July 9, 1993, from your  
17 lawyer to Mr. Gordon Davidson.

18 A. (Examining documents). There appears to be  
19 one - two errors that delineates this from that one.  
20 A minor error, the word 'has' is eliminated or added in  
21 your complaint.

22 Q. In what line?

23 A. Second line. 'My client made', and this is  
24 apparently an inaccuracy. It should read by this  
25 comparison 'made' rather than 'has made'. And the

1 distinction in quotes on 'box up', third sentence down  
2 at the end there's a difference between quotations and  
3 a minor -

4 MR. DeMOISEY: One line as opposed to two in  
5 quotes.

6 Q. In the -

7 A. Right here, 'box up' and 'box up'.

8 Q. To articulate the differences that you're  
9 talking about, in the complaint in the paragraph to  
10 which I referred you the sentence is typed, "Apparently  
11 during this employment period, ~~consequently~~, my client has  
12 made copies and - and that appears in the complaint.  
13 In the letter itself your point is that the sentence  
14 read, "Apparently during this employment period my  
15 client made copies of documents," and did not have in  
16 it the word has, is that correct?

17 A. That is correct. It is an incorrect  
18 transcription of this if that's what that happens to  
19 be.

20 Q. Referring then to the third literary  
21 paragraph in the July 9 letter of your lawyer to Mr.  
22 Davidson, does that - wait a minute. I'm asking you a  
23 question about this third paragraph.

24 A. Third. Un-huh.

25 Q. Is this an accurate statement in terms of

1 what occurred deleting the word 'has' as it appears in  
2 the complaint?  
3 A. And also including this.  
4 Q. I'll get to that in a minute.  
5 A. Okay. Would you repeat the question?  
6 Q. Yeah. Does this third literary paragraph  
7 reflect accurately what occurred in connection with  
8 this July 9 -- as part of this July 9 letter?  
9 A. Yes. I understand that it did.  
10 Q. All right. Now, the other problem you had  
11 relating to the quotation is that within the complaint  
12 where the box -- the paragraph itself is a quotation,  
13 my secretary typed single quotation marks around 'box  
14 up', whereas in your lawyer's letter, it has dual  
15 quotation marks around 'box up'. Is that the other  
16 change you noted?  
17 A. That's the other change.  
18 Q. Okay. Now, in connection with the materials  
19 which were in the box that your lawyer caused to be  
20 delivered to the Wyatt firm, did you include all  
21 documents and information which you had in your  
22 possession, custody and control at that time?  
23 A. I assert the Fifth Amendment privilege and  
24 remain silent.  
25 Q. Later your attorney caused to be delivered to

1 the Wyatt law firm a -- a document that was styled in  
2 that letter narrative. Do you remember that occurring,  
3 namely that you turned over to your lawyer a narrative  
4 and that your lawyer, in turn, forwarded that to the  
5 Wyatt law firm?  
6 A. I think the first part of that question would  
7 be attorney-client privilege, and the second part of  
8 the answer would be that I would assert my -- my right  
9 to the Fifth Amendment privilege to remain silent.  
10 Q. I refer you, sir, to paragraph 13 of the  
11 complaint which says, quote, referring -- I'm sorry.  
12 Refers to a letter of September 22, 1993, from your  
13 lawyer to Wyatt in which a sentence from that letter is  
14 quoted, quote, my client has drafted an -- a, the word  
15 narrative underlined, by which he tells me he has,  
16 quote, with a single quotation mark, put all the pieces  
17 together, with a single quotation mark and then closing  
18 the double quote, and that the narrative, double  
19 quotes, refers to documents in the box, and the box is  
20 in single quotes, closed quote. Now, look at that  
21 portion of paragraph 13 of the complaint, and I'll ask  
22 you if that did occur on or about September 22, 1993?  
23 A. (Examining document). I would have to see  
24 any statement of a draft of a letter sent from my  
25 attorney to that.

1 Q. You want to finish your sentence? I'm not  
2 sure you have.  
3 A. To the law firm or whatever is referred to in  
4 this. I'm just reading this briefly.  
5 Q. I show you --  
6 A. Wyatt received this, I suspect.  
7 Q. I show you the fourth page -- excuse me, the  
8 third page of your lawyer's September 22, 1993, letter  
9 to the -- to Greg Haynes at the Wyatt law firm that  
10 shows carbon copy client, because at that time he was  
11 preserving your confidentiality, and I direct your  
12 attention to the third from last full paragraph  
13 starting, "To that end my client has drafted a  
14 narrative," and ask you with that full quotation, a  
15 portion of which appears in the complaint, did the  
16 events as reflected in that third to last paragraph on  
17 the third page of your lawyer's letter occur?  
18 A. (Examining documents). The answer is 13 of  
19 the complaint reference to one, two, three, four, five,  
20 sixth sentence on down and part of your question is  
21 vaguely but not exactly similar to the third sentence  
22 on page two or -- or the third paragraph on page two of  
23 this letter signed by Mr. DeMoisey.  
24 Q. I will resume questioning on that point as  
25 soon as I take a break. I need to take one myself.

1 (SHORT RECESS)  
2 Q. Sir, without belaboring comparisons between  
3 the September 22, 1993, letter from Mr. DeMoisey to Mr.  
4 Greg Haynes at the Wyatt firm with the paragraph in the  
5 complaint that I've referred you to, I'll hand you back  
6 a copy of that letter and again refer you to the third  
7 paragraph from the end of the letter that starts, "To  
8 that end my client has drafted." There's the letter.  
9 And my question to you is on or about September 22,  
10 1993, with your knowledge and consent did Mr. DeMoisey  
11 transmit to the Wyatt firm the sealed narrative  
12 enclosed with this particular letter?  
13 A. I believe that this is attorney-client  
14 privilege. I don't know the -- I would assert the  
15 Fifth Amendment privilege to remain silent on this.  
16 MR. DeMOISEY: Could I confer with my client a  
17 minute?  
18 MR. BALLANTINE: Yes, in light of that answer  
19 particularly as it relates to the attorney-client  
20 privilege. But before you do, let us get another  
21 logistical matter agreed to or not. Several times  
22 already the witness has asserted the Fifth Amendment,  
23 asserted the privilege under the Fifth Amendment and  
24 verbalized it in various ways. My understanding of the  
25 law is that if a witness is asserting the Fifth



1 Amendment privilege, he or she does so on the grounds  
2 that answering the question may tend to incriminate the  
3 witness. And if we have an understanding that his  
4 assertion of the Fifth Amendment in whatever form he  
5 says it incorporates by reference the phraseology that  
6 the answer may tend to incriminate him, I won't have to  
7 ask that question each time. But if you want me to ask  
8 it each time, I will. He's just now asserted it  
9 relating to this document, and I'm not trying to argue  
10 with you whether he should or should not. But I think  
11 in order to properly assert it, that that magic  
12 language needs to be said. So in your consultation  
13 with him bear in mind that that's where I want to go,  
14 and that is, that his assertion again in whatever verb  
15 - words he uses will include the - what I perceive  
16 to be the required language, that the answer may tend  
17 to incriminate him.

18 MR. DEMOISEY: What was the question?

19 MR. BALLANTINE: The question is can we agree that  
20 as to the privilege of the Fifth Amendment that he has  
21 already asserted and to the extent he may assert it any  
22 more in this deposition, it is on the basis that his  
23 giving an answer, if he were to do so, may tend to  
24 incriminate him?

25 MR. DEMOISEY: Well, I appreciate the spin

1 that you're trying to put to it. The Fifth Amendment  
2 says what it says, and that's what he is asserting, is  
3 literally what the Fifth Amendment says.

4 MR. BALLANTINE: So there's no misunderstanding,  
5 if he does not properly assert it, we're going to claim  
6 that he doesn't have a right thereafter to assert it in  
7 response to follow-up questions to the answer to which  
8 he improperly asserts it, because I believe under the  
9 Fifth Amendment we're entitled, if he asserts the  
10 privilege, to have - to require that he state the  
11 grounds on which he asserts it, and if he doesn't do  
12 so, that that's a waiver of his right to later assert  
13 it as to that subject matter. And that's going to be  
14 my position when we get down the road in this  
15 litigation. Now, if you don't want to agree to the  
16 stipulation that it includes that language, that's okay  
17 with me.

18 A. Does he - (Conferring off the record with  
19 Mr. Demoisey).

20 MR. DEMOISEY: It's simply a matter of trying  
21 to put the spin that he wants on it. The Fifth  
22 Amendment privilege as my client is trying to assert it  
23 as a layperson is literally what the Fifth Amendment  
24 says it is, number one. Number two, in this situation  
25 where the general allegation has been made in the

1 literal paragraph one of the complaint originally filed  
2 by the law firm which states, "This is an action  
3 against unknown defendant by his attorney, J. Fox  
4 DeMoisey, for theft, fraud, conversion, breach of  
5 fiduciary and common law duties and breach of  
6 contractual covenants by unknown defendant," we take  
7 that to be a very general, not very specific, general  
8 allegation that the plaintiff at that time, a law firm  
9 - and again I'm not - I assume that the client is  
10 also joining in that allegation - alleges generally  
11 and nonspecifically a criminal act. It is in that  
12 context that my client is asserting the Fifth Amendment  
13 in terms that any of the various questions to which he  
14 has generically asserted the Fifth Amendment may intend  
15 to inculcate him in a criminal act potentially. It is  
16 an unusual circumstance that I have articulated both to  
17 the court and to counsel that not being able to  
18 understand all the things that are going on here and  
19 not being able to understand exactly what it is that  
20 either the law firm or the client specifically is  
21 saying is the criminal act throws a wide net around a  
22 lot of possible things. It is within that context I am  
23 somewhat constrained to be able to assist my client,  
24 because I'm not allowed to see many of the things that  
25 the law firm has seen, the client has seen, he has seen

1 but as Judge Wine put it neither the judge nor lead  
2 counsel, Mr. Ballantine or myself have seen. That is  
3 the basis. It may be or may not be that these  
4 statements or questions may inculcate him. I don't  
5 know. But in that context he is asserting a Fifth  
6 Amendment because it may inculcate him, and that is the  
7 basis of his privilege. Sometimes I've heard it  
8 tinted, but I don't wish to quibble with you. He's  
9 asserting the Fifth Amendment to the best that he can  
10 under the circumstances.

11 MR. BALLANTINE: Well, you, of course, as his  
12 counsel are here present. And my assertion at a later  
13 time is going to be if that is insufficient, that that  
14 in and of itself would constitute a waiver of having to  
15 testify as to the subject matter as to which it is  
16 asserted. You just articulated the reason that I think  
17 we're entitled to have either the witness or his  
18 counsel assert that the basis of the refusal to answer  
19 is that he's protected under the Fifth Amendment  
20 because the answer may tend to incriminate him, may  
21 tend to inculcate him, if you wish. And if we have a  
22 stipulation that that is included within every single  
23 time he asserts in whatever fashion the Fifth  
24 Amendment, we may move on from that particular issue.

25 MR. DEMOISEY: We can stipulate to that.

1 MR. BALLANTINE: Now, as part of your answer -  
 2 not as part of. As your answer you asserted both the  
 3 Fifth Amendment and the attorney-client privilege. I  
 4 want to make sure you understand that the letter in  
 5 which this third from last paragraph appears was a  
 6 letter sent to an outsider, namely the Wyatt law firm.  
 7 You do understand that, correct?  
 8 A. In the context of Mr. DeMoisey's signature if  
 9 this states this, I am still asserting the rights to  
 10 the Fifth Amendment privilege. And do I have to do the  
 11 litany? I'm not really sure as to what you agreed on  
 12 at this point. I need to talk to you.  
 13 Q. I'll let your lawyer state it.  
 14 MR. DeMOISEY: Let me say what I think I  
 15 agreed to, and you can tell me if that's not correct.  
 16 I think what we're trying to say is when you generally  
 17 say you assert my Fifth Amendment privilege, we're  
 18 trying to get around of having to go through the  
 19 recitation of the litany of all the magic words. Just  
 20 by saying the Fifth Amendment we are agreeing that  
 21 without reciting each and every time, it is literally  
 22 what the Fifth Amendment says, and just to make sure  
 23 we've included the magic words, I think as counsel has  
 24 said, that the answer may tend to incriminate or  
 25 incriminate you.

1 A. I understand that.  
 2 MR. DeMOISEY: With the emphasis on may.  
 3 A. Is the abbreviation 'the Fifth Amendment'  
 4 here? Would you accept that?  
 5 Q. With this stipulation, yes.  
 6 A. Yes.  
 7 Q. Assuming you're willing to stipulate that  
 8 when you say Fifth Amendment.  
 9 A. I would be willing to within all of the  
 10 context of the Fifth Amendment privilege which I  
 11 believe is what you're encompassing here. I don't mind  
 12 abbreviating it for the purposes of economy, so to  
 13 speak.  
 14 Q. And it does include this what we've come to  
 15 call the magic language of 'may tend to incriminate' as  
 16 part of your entire encompassing of the Fifth  
 17 Amendment?  
 18 A. Yes. I would say that it might include that  
 19 - those parameters.  
 20 Q. Did you say it might include that or does  
 21 include that?  
 22 A. Well, it...  
 23 MR. DeMOISEY: We're getting into -  
 24 Q. We're at an impasse. I'm not willing -  
 25 because of the confusion at this stage, I'm not willing

1 to waive my client's rights to insist on answers unless  
 2 there is a proper assertion of the Fifth Amendment  
 3 privilege, so that when we present the issue to the  
 4 court we - I want the record entirely clear of what  
 5 you're asserting or your counsel is asserting for you.  
 6 And I'm telling counsel and the witness that if it is  
 7 not properly asserted, we will claim, among other  
 8 things, that that does not constitute a proper  
 9 assertion and that, therefore, the privilege has been  
 10 waived. So we don't have a clear enough stipulation,  
 11 and we're just going to have to go at it question by  
 12 question.  
 13 MR. DeMOISEY: Well, and to pick up on a  
 14 point that you said that you believe your client has a  
 15 right to insist upon pertinent answers if you don't  
 16 believe that the Fifth Amendment privilege has been  
 17 properly invoked. I would also say that I do not agree  
 18 with that position. I'm not at all sure your client  
 19 has any right to insist upon those answers for the  
 20 following reasons. Number one, I don't think that's  
 21 incumbent upon a layperson, paralegal or not, to have  
 22 to sit here and give legal opinions as to  
 23 constitutional law. Number two, I'm not at all sure  
 24 that the questions are proper in the sense that until  
 25 the crime fraud exception question has been resolved,

1 I'm not at all sure there is any privileges of  
 2 confidentiality to be protected to start with. Number  
 3 three, until such time as the plaintiffs make it clear,  
 4 more than just the general allegations in the lawsuit,  
 5 as to particularly what it is that they believe is a  
 6 criminal act, it's not fair to have Mr. Williams or  
 7 even myself try to guess what it is that you all are  
 8 getting to. So, you know, I guess the other way to go  
 9 at this is, which I'm beginning to believe since we've  
 10 gone in my opinion way far afield of what Judge Wine  
 11 had originally said the purpose of this deposition was  
 12 to be, until such time as the law firm and/or Brown &  
 13 Williamson makes it clear as to what they mean by these  
 14 allegations, it becomes a problem particularly in the  
 15 context that I'm restrained in many respects from  
 16 communicating with my client, very difficult to sort  
 17 out just what is and what is not proper in this  
 18 respect.  
 19 Recognizing that we have reached an impasse,  
 20 recognizing that it is a circumstance where we have not  
 21 even yet answered this lawsuit nor gone through any  
 22 discovery, nor availed ourselves of the rules and some  
 23 of the benefits of the civil procedure that we're  
 24 entitled to, it's apparent to me that this situation  
 25 has just gone to the point where I can no longer agree

1 to further answer -- to have my client further answer  
2 questions. Recognizing it's got to this point, it's my  
3 suggestion, and I'm going to advise my client that  
4 we're probably going to have to go back to Judge Wine  
5 and get some ground rules laid here. This is just -- I  
6 mean, I recognize and I'm not criticizing counsel. I  
7 think you're doing a very admirable job of trying to  
8 blitz creek this thing through, but I'm just not going  
9 to go along with it any more.

10 MR. BALLANTINE: The pending -- excuse me.

11 MR. DEMOISEY: Go ahead.

12 MR. BALLANTINE: The pending question relates  
13 directly to the distribution and whereabouts of  
14 documents. The pending question relates to a statement  
15 that you on behalf of your client made to the Wyatt law  
16 firm that your client had drafted a narrative by which  
17 he tells me he has, double quotes, put all the pieces  
18 together, close the double quotes. I have not read  
19 this narrative, speaking of yourself. My client tells  
20 me that the narrative refers, parentheses, quotes,  
21 question mark, footnotes, question mark, closed  
22 parentheses, in, double quotes, the box, close the  
23 double quotes. The sealed narrative is enclosed  
24 herewith. That topic relates specifically to -- excuse  
25 me. That paragraph relates specifically to the

1 documents in issue in this case. And the pending  
2 question is to this witness, did these events occur as  
3 reflected in your letter, a copy of which you sent to  
4 your client. Now, that is clearly within the scope of  
5 what Judge Wine contemplated, what we said and what we  
6 want to get to, did this occur relating to the  
7 narrative. Now, that's my question. Did that occur as  
8 I've just read it with respect to the narrative you put  
9 together?

10 MR. DEMOISEY: I don't have a problem with  
11 what you just said, counsel, and that particular  
12 question, quite frankly, I do believe is within the  
13 scope of Judge Wine's circumstance. But that question  
14 then went off into another area of -- about this Fifth  
15 Amendment privilege and his answer. That's -- while I  
16 had problems with other questions being in the scope, I  
17 don't have a problem of that question being within the  
18 scope of what Judge Wine wanted done here today. But  
19 we then went off on this Fifth Amendment situation,  
20 which it's just becoming even more altogether clear to  
21 me that I'm just in an impossible circumstance in terms  
22 to properly advise my client. Now you're asking my  
23 client legal opinions and telling him that if it's not  
24 properly worded and all those sorts of things.

25 And I'm saying that where this is going in

1 the context of where we're going with all of these  
2 stipulations and agreements and all this sort of thing  
3 is just untenable. I just cannot go -- I'm in an  
4 impossible circumstance. I cannot render effective  
5 assistance of counsel in these areas of criminal  
6 allegations, because I simply have not been given an  
7 opportunity to look into all the information that is  
8 available. I mean -- and I'm -- the more I sit here  
9 the more I'm convinced is that I'm just going to have  
10 to call a stop to this deposition. We've answered --  
11 you've asked generally about the location of  
12 documents. And until I can -- I certainly am not being  
13 disrespectful to counsel, but I'm in an impossible  
14 circumstance. And this is just getting more and more  
15 deep, and I feel more and more inadequate at this point  
16 to advise my client. Until such time as we get an  
17 opportunity for me to be able to see these documents  
18 and see the narrative and until we get to the point of  
19 whether or not these privileges and what-not even  
20 exist, it's an impossible circumstance for my client to  
21 protect himself or me to advise him on how to protect  
22 himself in this circumstance. It's unfortunate, but I  
23 don't know anything else to do.

24 MR. BALLANTINE: I do. I don't know what's in the  
25 narrative any more than you do, and the question

1 pending and you said that you could not stipulate to my  
2 -- to the inclusion of the -- what I perceive to be  
3 important language in an assertion of the privilege. I  
4 accept your nonstipulation. We will deal with that  
5 question by question. As to the pending question, it  
6 has directly to do with documents that are the subject  
7 of this litigation. And the only question is, did this  
8 occur on or about September 22 as reflected in the  
9 letter from which I have quoted in this record? That  
10 takes a yes, no, or his assertion of the privilege,  
11 whatever privilege he wants to assert. Now, I do  
12 insist on an answer to the pending question or the  
13 assertion of whatever privileges he or you want to  
14 assert on his behalf. And I do insist on the right to  
15 go forward with questions relating to discussions of  
16 information from the documents involved in this lawsuit  
17 and the other matters that are included within the  
18 scope of the deposition notice and within the scope of  
19 Judge Wine's order and within the scope of Judge  
20 Johnstone's order. So the question to you, sir, is did  
21 this occur, this referring to the contents of the third  
22 to last paragraph in Mr. Demoisey's letter of September  
23 22, 1993, to Greg Haynes at the Wyatt firm?

24 A. Mr. Ballantine, respectfully, I have  
25 understood my counsel to have asked that this

1 deposition be closed at this point in time. But I'll  
2 consult with my attorney to find out about his  
3 position.  
4 MR. DeMOISEY: Well, you don't need to  
5 consult with me. It is an impossible circumstance.  
6 And with all due respect with both courts, we came here  
7 in good faith today to try to do what we could do  
8 within the confines of this limitation. As this thing  
9 becomes more and more specific, becomes more and more  
10 apparent that it's absolutely imperative that this  
11 crime fraud exception question be looked at by the  
12 court, number one. But even more importantly, it  
13 becomes in my mind more and more clear that I'm going  
14 to have to press to the extent that I can the ability  
15 to represent my client in terms of seeing his narrative  
16 and also in seeing this box of documents. I cannot  
17 effectively advise him and get caught between the  
18 technicalities as counsel has posed and not knowing  
19 what my client can or cannot answer and not knowing the  
20 circumstances and on top of that not knowing even  
21 specifically the allegations that are being either  
22 prepared or contemplated or whatever circumstances. At  
23 this point in time it is critical in advice to him that  
24 I know what is going on. And I cannot place myself or  
25 my client in the position of not getting proper

1 advice. And the only thing I know to do, since we have  
2 gone as far as I think I can go at this time, is to  
3 postpone the deposition until such time as I can seek  
4 either a definitive opinion as to whether or not I can  
5 see these things. It's been raised but not exactly  
6 addressed. And I feel I must press the issue at this  
7 time.  
8 MR. BALLANTINE: I disagree with your statement  
9 that it's been raised but not specifically addressed.  
10 It was specifically addressed, raised and argued and  
11 denied by Judge Johnstone. That gets into a legal  
12 point.  
13 MR. DeMOISEY: Well, we still have the  
14 problem that I have is that a three-judge panel has not  
15 even seen those things yet, number one. And number  
16 two, by going in this manner it deprives my client the  
17 right of appeal -- actually right of review of Judge  
18 Johnstone's by the three-judge panel and subsequently  
19 his right of appeal by the supreme court if necessary.  
20 And while perhaps Judge Wine does not agree, it is a --  
21 an unusual circumstance.  
22 MR. BALLANTINE: In order to present the arguments  
23 to Judge Wine and/or Judge Johnstone and/or a  
24 three-judge panel, I have a right to proceed, and I do  
25 intend to. I have heard the witness's response to the

1 pending question. My next question is with whom did  
2 you discuss any of the information referred to in the  
3 deposition duces -- notice duces tecum and the  
4 restraining order, a copy of which was attached to that  
5 notice? With whom have you discussed any of such  
6 information before you were served with the restraining  
7 order?  
8 A. Would you clarify the question, please?  
9 MR. DeMOISEY: Well, let me --  
10 MR. BALLANTINE: Before you -- wait a minute. He  
11 asked me to clarify, and I will.  
12 MR. DeMOISEY: All right.  
13 A. I want you to clarify it for my attorney.  
14 MR. DeMOISEY: I don't have a problem with  
15 the question.  
16 Q. Before you were served with this restraining  
17 order, identify by person and address everyone with  
18 whom you discussed the contents of any of the  
19 documents, any of the material referred to in the  
20 deposition notice and the restraining order.  
21 A. I'm deferring to my attorney, who I  
22 understand has argued successfully that we close this  
23 particular deposition.  
24 Q. He hasn't argued successfully. Pardon my  
25 interruption, but that's absolutely false.

1 A. Okay.  
2 Q. It is not successfully, and I will argue for  
3 contempt and advice of contempt if this is not  
4 permitted to proceed.  
5 A. Might I consult with my attorney?  
6 MR. DeMOISEY: Well, let me clarify the  
7 circumstance here. I appreciate the need that you want  
8 certain questions answered such that you can put a  
9 proper record together to go and do the things that you  
10 need to do. We are under an order to be here under a  
11 limited scope of examination, and that's why we're  
12 here. Now, as I understand the question, you have  
13 asked who did my client speak with prior to September  
14 29th, 1993, concerning the information that's the  
15 subject of this action.  
16 MR. BALLANTINE: Correct.  
17 MR. DeMOISEY: All right. First of all, I  
18 would say obviously part of that has -- that would be  
19 one of the persons would be me. And to that extent  
20 what he told me is, I think, attorney-client  
21 privilege. Beyond that I would instruct him not to  
22 answer on the grounds of the Fifth Amendment no matter  
23 which way you would care to have that magically  
24 language, if you will, because particularly of the  
25 word 'may' in that magic language.

1 Q. Do you accept your counsel's advice and  
2 decline to answer on the grounds stated by him?

3 A. Yes, sir, I do.

4 Q. To whom did you send any correspondence  
5 relating to any of the materials covered in the  
6 deposition notice and restraining order before  
7 September 29, 1993?

8 MR. DeMOISEY: I would advise the client the  
9 same answer as the one before. Well, with the  
10 exception I don't believe he mailed me anything.

11 Q. Do you accept the advice of your counsel and  
12 decline to answer on that basis?

13 A. Yes, sir, I do.

14 Q. To whom did you send any correspondence  
15 relating to the materials in the restraining order and  
16 the deposition notice duces tecum after September 29,  
17 1993?

18 A. I'll defer to counsel again.

19 THE REPORTER: I'm sorry. I can't hear.

20 MR. BALLANTINE: Just show he's conferring with  
21 counsel out of the hearing of the court reporter and of  
22 opposing counsel.

23 MR. DeMOISEY: I'd like an opportunity to  
24 confer with my client. This gets into a circumstance  
25 that I am not at all clear. I have not discussed what,

1 If anything, has happened since the 20th other than  
2 obviously conversations with myself. Because of the  
3 nature of the restraining order, I'm not at all sure  
4 I'm allowed to ask him that question.

5 MR. BALLANTINE: I think because of the  
6 restraining order you and I are both allowed to ask him  
7 the question, have you sent any of this information to  
8 anyone since September 29, 1993?

9 MR. DeMOISEY: Well...

10 MR. BALLANTINE: That just takes a yes or a no.

11 MR. DeMOISEY: May I adjourn a second and  
12 talk with my client?

13 MR. BALLANTINE: Show there's an adjournment.  
14 (SHORT RECESS)

15 MR. BALLANTINE: I'll ask the reporter to read  
16 back the pending question, and if there was an answer,  
17 to give that answer.

18 (THE QUESTION COMMENCING ON PAGE 50, LINE 5  
19 WAS READ BY THE REPORTER)

20 MR. DeMOISEY: Okay. Let me first state that  
21 with respect to compliance to the restraining order, I  
22 do not have a problem with that question. I think  
23 that's an entirely legitimate question. The problem  
24 that I do have with it is the way it is phrased  
25 presupposes implications at least of prior questions to

1 which Mr. Williams has either not answered or been  
2 instructed not to answer or has asserted privilege. If  
3 I may suggest that if the question is -- I have a  
4 problem with the word information, I guess. I've had a  
5 problem with information, that word throughout this  
6 entire circumstance so far. If the question is have  
7 you had communications about the subject of this  
8 lawsuit to anyone other than obviously counsel, I think  
9 he has a right to talk to counsel about it, in terms of  
10 not communicating anything about this lawsuit pursuant  
11 to Judge Wine's order, without presupposing or implying  
12 something in previous questions, I think that's an  
13 appropriate question to answer. I think he does owe  
14 the court and your clients an answer as to whether or  
15 not he's communicated anything. But I don't want it to  
16 imply more in terms of the previous questions of what  
17 information he has or allegedly has or doesn't have.  
18 That's probably very poorly phrased. I'm struggling  
19 obviously with it. But I think you have a right to ask  
20 have you published or communicated anything without  
21 implying what that anything might be.

22 Q. Do you understand what your counsel just  
23 said?

24 A. I do.

25 Q. What's the answer?

1 A. No, I have not.

2 Q. Now, I want to go back to my question, which  
3 doesn't presuppose anything. It relates to a specific  
4 pair of documents, the deposition notice duces tecum  
5 and the restraining order. Since September 29, 1993,  
6 have you communicated to anyone any of the materials or  
7 information referred to in either of those documents?

8 MR. DeMOISEY: Let me again clarify. I don't  
9 have too much problem with that question, without  
10 admitting or denying what all that information might or  
11 might not be. I think the substance of your question  
12 is trying to find out if there has been compliance with  
13 the restraining order. Is that --

14 MR. BALLANTINE: Compliance with the restraining  
15 order is one component. But it relates also to the  
16 communication of privileged information we contend.

17 MR. DeMOISEY: Un-huh.

18 MR. BALLANTINE: And so to the extent my question  
19 is pending, it says since September 29, 1993, have you  
20 communicated to anyone anything relate -- covered by  
21 the deposition notice duces tecum and the restraining  
22 order, question mark?

23 MR. DeMOISEY: Okay. If we could just throw  
24 in one further clarification, without going to the  
25 question of what that body of information may or may

1 not be.

2 MR. BALLANTINE: I haven't asked that, because I  
3 think that's privileged. All I'm asking is has he  
4 communicated to anyone any of the information related  
5 - excuse me, any of the information defined and  
6 described in those two documents. It's that simple.

7 A. Not - the answer is specifically no, I do  
8 not have any - I have not violated the restraining  
9 order in any way.

10 Q. Before September 29, 1993, at the hour of the  
11 day at which you were served, before that time had you  
12 stored any of the kind of information referred to in  
13 those two documents, they're - Deposition Exhibit 1 is  
14 the restraining order, Deposition Exhibit 2 is the  
15 deposition notice duces tecum. Before 4:35 or so P.M.  
16 on the afternoon of September 28, 1993, had you stored  
17 on - in any form of computer storage or retrieval or  
18 disk any of the information referred to in that pair of  
19 documents?

20 MR. DeMOISEY: All right. Now we're getting  
21 back into the same problem I had before. You know,  
22 that is obviously designed to inquire into matters that  
23 are protected by my client's right to claim the Fifth  
24 Amendment to the best we can ascertain what is going  
25 on. Again, that causes me great concern, because I

1 don't know, am not permitted to know what the answers  
2 to that even could be. And I'm trying to be as  
3 cooperative as I can with counsel and in terms of  
4 trying to obey to the best that I can, have my client  
5 obey to the best he can the orders of Judge Wine. But  
6 we're getting right back into the same area again. I  
7 was willing to go along with the restraining order  
8 questions because I think that's a proper area of  
9 inquiry. I think Judge Wine wanted to know the answer  
10 to that. But now we're getting back into the same  
11 problem I had before. And I would ask counsel if  
12 you've got other questions that fit within the scope of  
13 trying to find out what you need to know pursuant to  
14 what Judge Wine has authorized without getting into  
15 Fifth Amendment problems, I'm happy to try to  
16 accommodate to the best that I can. If we're going to  
17 get into this Fifth Amendment situation, I'm going to  
18 have to call a stop to it, because this has just gotten  
19 to the point where I cannot imagine a circumstance how  
20 a lawyer could get placed in this kind of situation  
21 except for the circumstances of this case, I suppose.  
22 I cannot render effective assistance of counsel in  
23 these areas of criminal allegations without knowing  
24 what's going on.

25 Q. Read the pending question to the witness.

1 (THE QUESTION COMMENCING ON PAGE 53, LINE 10  
2 WAS READ BY THE REPORTER)

3 MR. DeMOISEY: I instruct the witness not to  
4 answer.

5 MR. SMITH: You've stated several times in  
6 here words to the effect of the limitation on the  
7 deposition. The order entered by the judge makes no  
8 limitations on the subject of the deposition other than  
9 related to the issues in the temporary restraining  
10 order. The judge hasn't limited the deposition in his  
11 order in any way. You keep making reference to it as  
12 if there's some statement by the judge of areas of  
13 inquiry when there is, in fact, not. And I just wanted  
14 that stated on the record.

15 MR. DeMOISEY: Well, I appreciate your  
16 comment, Counsel, but in terms of persuading Judge Wine  
17 to this deposition, I believe Mr. Ballantine made it  
18 very clear what the limited scope that he wished to  
19 pursue.

20 MR. SMITH: Certainly the question pending is  
21 within that scope.

22 MR. DeMOISEY: Well, that's what we  
23 disagree.

24 MR. SMITH: So it's your position that a  
25 question about whether your witness has retained

1 information before the entry of an order thereby having  
2 the ability to distribute it is not relevant to the  
3 question of where these documents may be with third  
4 parties? Is that your position?

5 MR. DeMOISEY: My position is specifically  
6 that that relates in my opinion, to the best that I can  
7 ascertain, recognizing that you all have just made  
8 generic allegations of criminal conduct and that I am  
9 not, as I understand it, permitted to see either the  
10 narrative or the box of documents, that that gets into  
11 the potential question of whether or not he may have  
12 any criminal liability possibly. And it is that  
13 problem more so than the scope problem, although I do  
14 have a little bit of problem with the scope.

15 MR. SMITH: Well, that's what I'm trying to  
16 get clear. You have a problem with the pending  
17 question that it is beyond the scope of the order  
18 entered by the judge, is that correct?

19 MR. DeMOISEY: For two reasons. One, it has  
20 to do with the Fifth Amendment problems.

21 MR. SMITH: It has nothing to do with the  
22 scope? I'm asking the factual scope of the question.

23 MR. DeMOISEY: Counsel, I'm not going to  
24 debate with you. You're entitled to your opinion. I'm  
25 entitled to my opinion. I believe it goes beyond the

1 scope in the sense that it is seeking information that  
2 may or may not inculcate my client, which I don't  
3 believe was the scope intended by Judge Wine initially,  
4 and I think it goes beyond - he has answered the  
5 question as to his conduct since September 29th, 1993.  
6 What he has done or not done prior to 19 - September  
7 29th, 1993, is, number one, obviously outside the scope  
8 of the restraining order and, number two, gets squarely  
9 into the problem areas that I've already articulated.

10 MR. SMITH: I apologize for interrupting out  
11 of turn.

12 MR. DeMOISEY: That's all right.

13 MR. SMITH: Let the deposition proceed.

14 MR. BALLANTINE: At the risk of belaboring this  
15 transcript with lawyer comments, I do want to say that  
16 there have been several references to the general or  
17 generic averments of the complaint. It's our  
18 contention the averments of the complaint are very  
19 specific as they relate to this man's former employment  
20 with the Wyatt law firm as a paralegal and that he, in  
21 the words of counsel for this defendant, made copies of  
22 documents and removed them from Wyatt's offices. And  
23 that's pretty clear to me. Counsel - well, I won't  
24 argue the point. I simply state for review of the  
25 appropriate judge that I do not agree with counsel's

1 characterization of the averments of the complaint.

2 Now, back to the pending question. I don't  
3 know that the witness has ever commented or answered or  
4 responded asserting a privilege or whatever. So I want  
5 to go back via the court reporter and ask her to read  
6 - read the pending question which related to the  
7 period of time before 4:35 P.M. or so on September 29,  
8 read that question and then see if the witness has  
9 given an answer or a response or an assertion of a  
10 privilege or anything in answer to the pending  
11 question. And then we'll move forward from there.

12 (THE QUESTION COMMENCING ON PAGE 53, LINE 10  
13 WAS READ BY THE REPORTER)

14 THE REPORTER: There was no answer by the  
15 witness.

16 MR. BALLANTINE: I want an answer or response or  
17 an instruction or something. You and I and Mr. Smith  
18 have debated on the record. So there's the pending  
19 question.

20 MR. DeMOISEY: I thought I had, but I would  
21 counsel my client to assert his Fifth Amendment  
22 privilege as to that question.

23 Q. Do you accept that advice and decline to  
24 answer?

25 A. Yes, I do. And...

1 Q. Sir?

2 A. No.

3 Q. I thought - I didn't want to interrupt you.

4 I may have asked this question at the very beginning,  
5 and if I am repeating, I apologize, but I need to be  
6 sure that this record is complete. At this time do you  
7 have subject to your possession and control any  
8 documents, computer disks or drives or other storage or  
9 retrieval systems containing any information from any  
10 of the documents that were referred to in the July 8,  
11 1993, letter of Mr. DeMoisey?

12 MR. DeMOISEY: I would advise my client to  
13 assert his Fifth Amendment privilege.

14 Q. Do you accept that advice and decline to  
15 answer?

16 A. I decline to answer on the basis of the Fifth  
17 Amendment privilege, and I accept my lawyer's advice.

18 Q. Do you have in your possession or control or  
19 custody any documents, computer disks or drives or  
20 other storage or retrieval systems of other things  
21 belonging to the Wyatt law firm or any of their clients  
22 besides the material referred to in Mr. Fox's July 8,  
23 1993, letter relating to the materials in the box that  
24 were sent back to Wyatt?

25 MR. DeMOISEY: I would advise my client to

1 assert his Fifth Amendment privilege.

2 Q. Accept that advice and decline to answer on  
3 that basis?

4 A. Yes, sir, I do.

5 Q. Do you have in your possession, custody or  
6 control any information learned during the - other  
7 than in your memory cells any information learned  
8 during the course of your employment by Wyatt relating  
9 to Wyatt files or client materials turned over to  
10 Wyatt?

11 MR. DeMOISEY: I'm not quite sure what that  
12 question means, but any information is a pretty wide  
13 variety. But again, more so again because of the  
14 problem I am not able to advise my client because I  
15 don't know all the necessary information I would need  
16 to know to properly advise him, I would advise my  
17 client to take the Fifth Amendment as to that question.

18 Q. Do you accept that advice and decline to  
19 answer?

20 A. Yes, I accept that advice and decline to  
21 answer on that basis.

22 Q. Do you have in your possession, custody and  
23 control any documents, manuscripts, narratives,  
24 reproductions, copies of any materials relating to any  
25 documents with which you worked while you were at the

1 Wyatt firm?

2 MR. DeMOISEY: I'm -- that question again to  
3 my mind is a tremendously expansive question. But in  
4 any event, again because I am without sufficient  
5 information to advise my client, I would advise him to  
6 take the Fifth Amendment on that, also.

7 Q. Do you accept that advice and decline to  
8 answer on that basis?

9 A. Take the Fifth Amendment and accept his  
10 advice as well.

11 Q. Are there in existence -- this is different  
12 from the previous question, which was subject to your  
13 possession, custody and control. To your knowledge are  
14 there in existence any documents, manuscripts,  
15 narratives, reproductions or copies of information or  
16 materials you learned from client or Wyatt files while  
17 you were employed there which were prepared -- strike  
18 that whole question. I'll start over. Pick up if you  
19 will the restraining order, which is Deposition Exhibit  
20 1, and turn to page two.

21 A. What paragraph?

22 Q. In the first paragraph of that page there is  
23 a Roman numeral three that starts out, all documents,  
24 manuscripts, et cetera.

25 A. Yes, sir.

1 Q. Do you see that?

2 A. I see this.

3 Q. I'll ask you if to your knowledge there are  
4 in existence any documents, manuscripts, narratives,  
5 reproductions or copies on which any part of the  
6 information defined in sub one of that paragraph has  
7 been collected, stored, portrayed, summarized or  
8 referred to in any manner?

9 MR. DeMOISEY: Again, same dilemma, and I  
10 would suggest to my client that he assert his Fifth  
11 Amendment privilege.

12 Q. Do you accept that suggestion and decline to  
13 answer on that ground?

14 A. Yes, sir, I do.

15 Q. Before September 29, 1993, did you disclose  
16 to anyone other than Wyatt or Brown & Williamson people  
17 any material or information that came into your  
18 possession or control while you were working at Wyatt  
19 relating to Brown & Williamson or cigarette production  
20 or sales or any such materials?

21 MR. DeMOISEY: Again --

22 Q. The question is did you disclose to anyone  
23 any of that kind of material?

24 MR. DeMOISEY: Again, I would say not being  
25 able to have access to the necessary information to

1 advise my client, number one, I would suggest that he  
2 assert the Fifth Amendment privilege. And also in that  
3 particular situation it would seem to me that because  
4 you are using the term all information, which I think  
5 is inclusive of what he's carrying around in his brain  
6 cells and able to verbally articulate, I would have to  
7 say that that would fall into the attorney-client  
8 privilege if I understand your question correctly.

9 MR. BALLANTINE: I don't think you do.

10 MR. DeMOISEY: That could be.

11 MR. BALLANTINE: It was to anyone and to the  
12 extent it may relate to you --

13 MR. DeMOISEY: I would like to qualify  
14 anyone.

15 MR. BALLANTINE: -- you are one of anyone. You  
16 are one of many, many potential anyone. And I  
17 understand your assertion as it relates to you. My  
18 question is now with that clarification --

19 MR. DeMOISEY: Are you excepting me out at  
20 this point? Okay.

21 Q. Other than Mr. DeMoisey -- and we don't admit  
22 that you had a right to disclose anything to him.  
23 That's another issue. But other than Mr. DeMoisey have  
24 you at any time before September -- September 29, 1993,  
25 disclosed to anyone other than the Wyatt people or

1 Brown & Williamson people any material or information  
2 that came into your possession or control while you  
3 were working at Wyatt on Brown & Williamson matters?

4 MR. DeMOISEY: That question having myself  
5 been excepted at least to a limited degree anyway for  
6 purposes of the question. Again, operating under the  
7 same disability as I've stated several times before, I  
8 would advise my client to assert the Fifth Amendment  
9 privilege.

10 Q. Do you accept that advice and decline to  
11 answer on that basis?

12 A. Yes, sir, I do.

13 Q. This is different I think from an earlier  
14 question I asked you, and so I don't think this is  
15 repetitive. To your knowledge does any of the  
16 information which you obtained while working in the  
17 Wyatt law firm on Brown & Williamson matters or has any  
18 of that information been put onto any computer disks,  
19 drives, storage or retrieval mechanisms? I should --

20 MR. DeMOISEY: Anywhere by anybody?

21 MR. BALLANTINE: Other than by Wyatt and Brown &  
22 Williamson.

23 MR. DeMOISEY: All right. Again, same  
24 disability and same advice to my client. I think he  
25 should assert a Fifth Amendment privilege at this time



1 to that answer.

2 Q. Do you accept -- excuse me.

3 MR. DeMOISEY: I'm finished. Thanks.

4 Q. Do you accept that and decline to answer?

5 A. Yes, sir, I do, on that basis.

6 Q. To your knowledge are there in existence any  
7 -- other than in the possession of Wyatt or Brown &  
8 Williamson or other attorneys representing Brown &  
9 Williamson in any attorney-client relationship, are  
10 there in existence any tangible or electronic materials  
11 or things which you obtained during the course of your  
12 work for Wyatt on Brown & Williamson matters? V

13 MR. DeMOISEY: Could you read that question  
14 back?

15 (THE LAST QUESTION WAS READ BY THE REPORTER)

16 MR. DeMOISEY: Again, operating under the  
17 same disability and to the extent that he could have  
18 knowledge, I'm sure there -- as expansive as that  
19 question is, I'm sure there's places and things that he  
20 has no knowledge of. But to the extent that there is  
21 knowledge I would advise him to take the Fifth  
22 Amendment privilege on that question, also.

23 Q. Do you accept that advice of your counsel and  
24 decline to answer?

25 A. Yes, sir, I do.

1 MR. BALLANTINE: As an aside, I would state that I  
2 believe the question was prefaced by saying to his  
3 knowledge, and obviously he can't answer as to anything  
4 he doesn't know about.

5 MR. DeMOISEY: Right.

6 Q. To your knowledge are there in existence any  
7 graphs or tables on which any part of the information  
8 described in the restraining order has been collected  
9 or stored or portrayed or summarized or referred to in  
10 any manner? V

11 MR. DeMOISEY: Again, same disability and the  
12 same advice to client.

13 Q. Same response by you, you accept the advice  
14 and decline to answer?

15 A. Yes, on the basis of the Fifth Amendment.

16 Q. Before September 29, 1993, did you use for  
17 any purpose or in any manner any of the material or  
18 information defined in the first paragraph of the  
19 restraining order?

20 MR. DeMOISEY: I would assume for the purpose  
21 of that question that that would be between the period  
22 of time after his employment?

23 MR. BALLANTINE: Certainly.

24 MR. DeMOISEY: Because obviously during his  
25 employment he would have.

1 Q. From the time of your employment. Let me  
2 restate it. From the time of your employment by Wyatt  
3 until September 29, 1993, in the afternoon when you  
4 were served with the restraining order, that entire  
5 period of time, have you used for any purpose or in any  
6 manner any of the material or information described in  
7 the restraining order other than in fulfillment of your  
8 responsibilities to Wyatt or -- and/or Brown &  
9 Williamson? V

10 MR. DeMOISEY: Same disability, same advice I  
11 would give to my client.

12 Q. Do you accept that advice and decline to  
13 answer the question?

14 A. Yes, sir, on the basis of the Fifth  
15 Amendment.

16 Q. Between the time of your employment by Wyatt  
17 and the late afternoon of September 29, 1993, and other  
18 than in fulfillment of your responsibilities to Wyatt  
19 and Brown & Williamson -- and/or Brown & Williamson did  
20 you reproduce in any way any of the material or  
21 information described in the restraining order?

22 MR. DeMOISEY: Same disability, same advice  
23 to client.

24 Q. Do you decline to answer on the advice of  
25 your counsel?

1 A. Yes, sir, I do.

2 Q. Do you have in your possession, custody or  
3 control -- I've just asked that. I'm sorry. Referring  
4 to the materials that you delivered to your -- excuse  
5 me, to your lawyer on or before July 9, 1993, which was  
6 boxed up and then returned to the Wyatt firm with the  
7 letter of that date relating to that material  
8 specifically, how many copies of that material were  
9 made by you or on your behalf by some commercial or  
10 other enterprise or other person? V

11 MR. DeMOISEY: Same disability, same advice  
12 to the client.

13 Q. Same -- strike that. On the advice of your  
14 counsel do you decline to answer?

15 A. Yes, sir, I do.

16 Q. With respect to the documents and the  
17 information contained in those documents that were put  
18 in a box and returned to Wyatt on or about July 9,  
19 1993, to your knowledge was any of the information from  
20 those materials put on any form of computer disk or  
21 drive or storage or retrieval mechanism? V

22 MR. DeMOISEY: Could you read the question  
23 back, please?

24 (THE LAST QUESTION WAS READ BY THE REPORTER)

25 MR. DeMOISEY: Same disability. Same advice

1 to client.  
 2 Q. Do you accept that advice and decline to  
 3 answer?  
 4 A. Yes, sir, I do.  
 5 Q. At the time you turned over to your lawyer the  
 6 related in this July 9, 1993, letter a box sealed with  
 7 documents within it, did you retain any documents of  
 8 the nature described in the restraining order?  
 9 MR. DeMOISEY: Same disability. Same advice  
 10 to client.  
 11 Q. Do you accept that advice and decline to  
 12 answer?  
 13 A. Yes, sir, I do.  
 14 Q. I want to elaborate on that question so  
 15 there's no misunderstanding what I'm after. Your  
 16 lawyer represented to Wyatt that you had assured your  
 17 lawyer that all of the documents which you had - of  
 18 which you had made copies and removed them from Wyatt's  
 19 offices, that you had assured him that all of those  
 20 documents or copies were within the box. My question  
 21 to you is very specific at this point. Were there any  
 22 documents of which you made copies and removed them  
 23 from Wyatt which you did not put in that box?  
 24 MR. DeMOISEY: First I would object to the  
 25 form of the question. The letter of July 9th says what

1 it says. Secondly, I have the same problem, same  
 2 disability and would advise the client to assert his  
 3 Fifth Amendment privileges.  
 4 Q. Do you accept the advice of your counsel and  
 5 decline to answer that question?  
 6 A. Yes, sir.  
 7 Q. So there's no misunderstanding about the  
 8 statements I made relating to the letter of July 9, Mr.  
 9 DeMoisey is correct. The letter does say what it  
 10 says. But for purposes of this question the letter  
 11 says, "Apparently during this employment period my  
 12 client made copies of documents and removed them from  
 13 your firm's offices. After reviewing the subject  
 14 employment contract and the above-described scenario, I  
 15 have advised my client to, double quotes, box up,  
 16 double quotes, the documents for the purpose of  
 17 returning these documents to your offices. My client  
 18 has agreed with this advice," period. Further in the  
 19 letter - well, the very next paragraph. "Therefore,  
 20 comma, tendered with this letter is a box with the  
 21 above-described documents. I presume this to be so as  
 22 I have not seen these documents nor have I seen the  
 23 contents of the box. However, my client assures me  
 24 that all the documents taken are now contained in the  
 25 tendered box. I believe this tender brings my client

1 back into compliance with the subject employment  
 2 contract," end of my quotation from the letter. Now,  
 3 again my question so - to eliminate one of the bases  
 4 of the objections of Mr. DeMoisey just now, at the time  
 5 you turned over to Mr. DeMoisey the sealed box that had  
 6 in it documents as defined and described in his - in  
 7 the two letters - two paragraphs I have just read, did  
 8 you retain any different documents besides the ones  
 9 defined there?  
 10 MR. DeMOISEY: Same dis - same disability  
 11 and problem, and I would advise the client to assert  
 12 his Fifth Amendment privileges at this time.  
 13 Q. Do you accept that advice and decline to  
 14 answer?  
 15 A. Yes, sir, I do.  
 16 Q. That related to documents not put in the  
 17 box. This is a different question now. Referring  
 18 again to the same two paragraphs in the July 9 letter  
 19 of Mr. DeMoisey, at the time of your delivery of the  
 20 sealed box containing documents, did you retain under  
 21 your custody or possession or control copies of any of  
 22 the documents that were in the box?  
 23 MR. DeMOISEY: Same disability. Same advice  
 24 to client.  
 25 Q. Do you accept the advice of your lawyer and

1 decline to answer on that basis?  
 2 A. Yes, sir, I do.  
 3 Q. Referring now to your - strike that.  
 4 Referring to the September 22, 1993, letter of Mr.  
 5 DeMoisey to the Wyatt firm, specifically Greg Haynes of  
 6 that firm, Mr. DeMoisey refers in that paragraph we  
 7 were talking about earlier in this deposition to a  
 8 narrative, and in the letter the word narrative is  
 9 underlined. First off, did you prepare at some time a  
 10 narrative in which you, in his words, quotes, put all  
 11 the pieces together, close the quotes, both of those  
 12 double? And the question is did you prepare a  
 13 narrative as defined in that - as described in that  
 14 sentence?  
 15 MR. DeMOISEY: (Nods head affirmatively).  
 16 Q. In fairness before you even hear an objection  
 17 from your lawyer or you respond or not, let me read the  
 18 paragraph, because there are going to be several  
 19 questions relating to it. To that end my client has  
 20 drafted a, underlined, narrative, by which he tells me  
 21 he has, double quotes, put all the pieces together,  
 22 close the double quotes. I have not read this  
 23 narrative. My client tells me that the narrative  
 24 refers, paren, quotes, question mark, footnotes,  
 25 question mark, close paren, to documents in, double

1 quote, the box, close the double quote. The sealed,  
2 underlined, narrative is enclosed herewith." Now,  
3 that's the end - that's the full quotation from the  
4 paragraph. My question at this moment is did you  
5 prepare a narrative of the sort described in that  
6 paragraph?

7 MR. DeMOISEY: Are you asking - maybe I'm  
8 confused. Are you asking did he prepare that narrative  
9 that was sent or one like it?

10 Q. No. No. Did you prepare a narrative of the  
11 sort described in that paragraph?

12 A. (Conferring off the record with Mr.  
13 DeMoisey).

14 MR. DeMOISEY: As to that question I'd have  
15 to say same disability and problem, and I would advise  
16 my client not to answer on the grounds of taking the  
17 privilege.

18 MR. BALLANTINE: I don't want to belabor this with  
19 more argument of counsel. But it seems to me that in  
20 the context of this question and of this paragraph  
21 there is a categorical statement that the client has  
22 drafted a narrative and that the sealed narrative is  
23 enclosed herewith. And you state in the letter,  
24 counsel states in the letter, that counsel has not read  
25 this narrative, and I accept that one hundred percent.

1 But as to the pending question of whether the client  
2 did or did not prepare such a narrative, I have a hard  
3 time seeing - and that that narrative was enclosed  
4 with this letter, I have a very difficult time seeing  
5 why the client - number one, why counsel can't  
6 understand what the question relates to, and number  
7 two, why this man should not answer whether it is true  
8 or not that he drafted a narrative of the type  
9 described and by the letter itself enclosed with the  
10 letter. Now, having made my argument I want to restate  
11 my question. And if you restate your objection and you  
12 decline to answer, that's okay.

13 MR. DeMOISEY: Could I make a suggestion to  
14 you? Where my problem is where we get off on ..  
15 because I asked very specifically, are you talking  
16 about this narrative. And you were describing a  
17 narrative or others of a similar sort or something  
18 implying to my mind, anyway, that there are possibly  
19 other narratives other than the one that was submitted  
20 to you or to the firm. I don't have a problem with  
21 asking him did you draft this narrative or author this  
22 narrative. Where I have the problem is where there's  
23 an implication that there are other narratives other  
24 than this one I don't know about.

25 Q. There's no such implication in my question,

1 and I assure you the question will be specifically put  
2 if I can get an answer to this question. But in order  
3 to move on, did you prepare the narrative referred to  
4 in that paragraph of your lawyer's September 22, 1993,  
5 letter?

6 A. I have - yes.

7 Q. Did you get the answer?

8 THE REPORTER: Yes.

9 Q. How many copies of that narrative as defined  
10 in that paragraph did you make?

11 MR. DeMOISEY: That, I would say again I'm  
12 under the same disability. I would advise my client  
13 not to answer on the grounds of the Fifth Amendment  
14 privilege.

15 Q. Do you accept the advice of your lawyer?

16 A. Yes, I do.

17 Q. And decline to answer?

18 A. Yes, I do.

19 Q. To whom, if anyone, did you send any copy of  
20 that narrative, that narrative, if, in fact, any other  
21 copies were made?

22 MR. DeMOISEY: Aside from the law firm?

23 Q. Yes.

24 MR. DeMOISEY: Again, same disability. I  
25 would advise the client to assert his Fifth Amendment

1 privilege at this time.

2 Q. Do you accept that and decline to answer?

3 A. Yes, sir, I do.

4 Q. At the time you turned over to your lawyer on  
5 or before September 22, 1993, did you, yourself, retain  
6 under your possession, custody or control a copy of  
7 that narrative?

8 MR. DeMOISEY: (Nods head affirmatively).

9 A. Yes.

10 Q. How many copies?

11 A. One.

12 Q. Is it as we speak here today still within  
13 your physical possession, custody or control? And by  
14 that obviously I don't mean you've got it sitting here  
15 with you.

16 A. I understand.

17 Q. But if it's in a lock box and you have the  
18 key to the lock box, that's your possession, custody or  
19 control. So is it in that broad categorization subject  
20 to your care, custody and control?

21 A. Yes.

22 Q. Is that narrative on computer storage or disk  
23 or retrieval or whatever?

24 A. To my knowledge it is not. No.

25 Q. Besides the narrative referred to in this

1 September 22, 1993, letter have you at any time since  
2 your employment by Wyatt up to September 29, 1993, in  
3 the afternoon when you were served with the restraining  
4 order prepared any other narratives relating to the  
5 subjects with which you were working on behalf of Wyatt  
6 and/or Brown & Williamson during your employment by  
7 it?

8 MR. DeMOISEY: Same disability. Same  
9 problem. I would advise my client at this point in  
10 time to assert his Fifth Amendment privilege.

11 Q. Do you accept that advice and decline to  
12 answer?

13 A. Yes, I do.

14 Q. From the time of your employment to - excuse  
15 me - employment by Wyatt until the service of the  
16 restraining order in this case did you reveal to anyone  
17 the subject matter or matters discussed in the  
18 narrative referred to in Mr. DeMoisey's September 22,  
19 1993, letter?

20 MR. DeMOISEY: Would advise the client to take his  
21 Fifth Amendment privilege as to that question.

22 Q. Do you accept that and decline to answer?

23 A. Yes, sir, I do.

24 MR. DeMOISEY: I'm assuming for the purpose  
25 of that question that would not include conversations

1 with me as his counsel.

2 Q. Well, let's get right to that. My question  
3 did not include that at the moment. And I will agree  
4 with that. Now I do need to ask some questions in that  
5 regard. Before September 29, 1993, at the time you  
6 were served with the restraining order did you discuss  
7 with Mr. DeMoisey the information contained in the  
8 documents which were put in the box referred to in the  
9 July 9 letter?

10 MR. DeMOISEY: I would have to say that that  
11 falls within the parameters of attorney-client  
12 privilege and instruct the witness not to answer.

13 Q. Do you accept that advice and decline to  
14 answer on that basis?

15 A. Absolutely.

16 Q. Before the service of the restraining order  
17 in this case did you discuss with Mr. DeMoisey any of  
18 the information contained in the narrative referred to  
19 in his September 22 letter?

20 MR. DeMOISEY: Again, I would advise the  
21 witness to assert his attorney-client privilege as to  
22 that communication.

23 Q. Do you accept that advice and decline to  
24 answer?

25 A. Absolutely.

1 Q. Before the service of the restraining order  
2 in this case did you discuss with Mr. DeMoisey -  
3 strike that. Let me give you a preface to this  
4 question. I have asked you with reference to specific  
5 information relating to a discussion with Mr. DeMoisey  
6 about information contained in the documents in the  
7 box. I then asked you about information - discussion  
8 with him about information contained in the narrative.  
9 So there are two categories of information. I now have  
10 a third category. Before the service of the  
11 restraining order in this case did you discuss with Mr.  
12 DeMoisey any information you learned in the course of  
13 your employment by Wyatt while working on Wyatt or  
14 Brown & Williamson matters or after your employment  
15 terminated, any information other than the information  
16 reflected in the documents in the box and the  
17 information reflected in the narrative?

18 MR. DeMOISEY: Again, I would instruct the  
19 witness to assert his attorney-client privilege.

20 Q. And do you accept that advice and decline to  
21 answer on that basis?

22 A. Absolutely.

23 Q. Mark this as Deposition Exhibit 5.

24 (WILLIAMS DEPOSITION EXHIBIT NO. 5 WAS MARKED)

25 MR. DeMOISEY: What did we mark as Exhibit

1 57

2 Q. I'm about to identify it if I can find it.

3 THE REPORTER: It's on the bottom there.

4 Q. The document that I have marked as Williams  
5 - had the reporter mark as Williams Deposition  
6 Exhibit 5 is a one and a quarter, more or less,  
7 document, copy of a document styled An Employee's  
8 Relationship To The Client and then Document Security  
9 Procedure which I will represent to all assembled is a  
10 portion of a Wyatt policy manual relating to those  
11 topics. Understanding our discussion earlier, I simply  
12 want to ask the witness one question about it, whether  
13 he has during his employment by Wyatt saw or reviewed  
14 any of that material?

15 MR. DeMOISEY: First of all, prior to his  
16 answer I will object in that this appears to be a, as I  
17 think your words were, a portion of the manual. If I  
18 recall correctly, it's not even complete. On the  
19 employee's relationship to the client it cuts off at  
20 the bottom of the page, and so it's not even a complete  
21 subsection of this manual. And I don't think it's -  
22 apparently this is numbered page 2-8. The next thing  
23 attached is 2-17. So I think it's somewhat improper to  
24 ask the question when the entire at least subsection of  
25 the document has not been available for his review.

1 But he may answer.

2 A. Okay. The answer, in addition to it, I have  
3 never seen this document. There may be in terms of my  
4 tenure there a document of this type which is available  
5 to other employees. I must point out for a distinction  
6 that I was employed as a temporary employee. As such  
7 certain manuals and other items which might be  
8 available to the regular employees such as attorneys  
9 and staff were not available to me. I do not recognize  
10 this document, and perhaps it is one of those that was  
11 not available to me.

12 Q. Okay. Because the pages are obviously  
13 separated by several intervening, let me get the  
14 reporter to mark page 2-17 as Deposition Exhibit 5A,  
15 and then I will clarify what I understood to be your  
16 answer relating to each separate one, and then we'll  
17 move on.

18 (WILLIAMS DEPOSITION EXHIBIT NO. 5A WAS MARKED)

19 Q. I will represent to the record and all  
20 assembled and the court that these are materials of the  
21 employee manual that my client has furnished to me that  
22 I contend relate to the issues in this lawsuit. And  
23 they are separated obviously. They simply sampled them  
24 together to keep them as what I contend are the  
25 relevant portions of the employee manual. So now

1 coming back and hearing your answer specifically  
2 relating to Williams Deposition Exhibit 5, is it your  
3 testimony you don't recall seeing the original or a  
4 copy of that document during your employment by Wyatt?

5 A. That is correct.

6 Q. And relating to -- turn the page. Relating  
7 to Exhibit 5A is it your testimony that you don't  
8 remember seeing that information or that document  
9 exposed to you at any time while you were with Wyatt?

10 A. You did say these are separate pages. I can  
11 see they are numbered differently. The answer is no, I  
12 have not seen this document.

13 Q. Okay. One other area for clarification for  
14 the court and perhaps counsel. In the July 9 letter  
15 Mr. DeMolsey says, "After reviewing the subject  
16 employment contract," and then further in that letter  
17 down in the last paragraph he says, "I believe this  
18 tender brings my client -- talking about the documents  
19 in the box. "I believe this tender brings my client  
20 back into compliance with the subject employment  
21 contract." Now, referring to Deposition Exhibit 3A,  
22 I'm not going to repeat the inquiry and your testimony  
23 about the signature and the date. But specifically  
24 with reference to document Deposition Exhibit 3A, does  
25 that appear to be the type of employment contract you

1 presented to Mr. DeMolsey at or about the time you  
2 wrote the July 9 letter?

3 A. I don't recognize this document at all.

4 Q. Okay. I would ask that counsel furnish to me  
5 a copy of the document or documents to which reference  
6 is made in the July 9 letter as, "After reviewing the  
7 subject employment contract," and then in the last  
8 paragraph on that first page, "I believe this tender  
9 brings my client back into compliance with the subject  
10 employment contract," that we be furnished forthwith to  
11 be attached to the transcript of this deposition a copy  
12 of the page or the multiple pages referred to when  
13 counsel refers to the subject employment contract in  
14 light of this witness's answers relating to Deposition  
15 Exhibits 3 and 3A. You don't have to respond at this  
16 moment. I do ask that you either furnish a copy of  
17 these document or documents comprising the subject  
18 employment contract as referred to in your July 9,  
19 1993, letter to Gordon Davidson or tell me that you  
20 decline to do it and why, and then we can discuss that  
21 or present it to the court if appropriate. Let me  
22 ask --

23 MR. DeMOISEY: That one I will agree to.

24 Q. Okay. Let's take an adjournment for a minute  
25 so I can confer.

1 MR. DeMOISEY: All right.

2 (SHORT RECESS)

3 MR. BALLANTINE: This may -- I don't want to argue  
4 with your lawyer on the record, but I do want to try to  
5 again shorten this thing. I asked a lot of questions  
6 relating to the categories in the restraining order and  
7 whether he had talked to anybody about it, whether it  
8 was stored and whether there existed any of these  
9 things. And in all of them with the exception of the  
10 narrative, as to which there were some answers, but as  
11 to all of those categories of what he had done with the  
12 information and the documents, what he had done with  
13 the documents, are there any such documents and those  
14 kinds of questions, he was on advice of counsel  
15 pleading the Fifth. I could go through a whole series  
16 of questions relating to each category saying are  
17 there, did you send them to anybody, did you talk to  
18 anybody about them, and I'm assuming that we would get  
19 all of the same objections, instructions and  
20 compliances that we have as I was tracking through on  
21 these restraining order questions about what he had  
22 done before the service of the restraining order. Now,  
23 my request to you is to agree that he would get the  
24 same instruction and certainly he would comply with  
25 your advice, or we are going to be a while and I'd have

1 to plow through a whole series.  
 2 MR. DeMOISEY: Well, to the extent that  
 3 that's a -- a fairly general question, I would --  
 4 sitting here right now I would think that generally  
 5 speaking that would be how he would reply. I would  
 6 only say there -- one does not come to mind at this  
 7 point, but it is possible that there could be one  
 8 singular question somewhere or something that might get  
 9 a different response, but I don't think so. But just  
 10 recognizing that more or less on the premise that  
 11 anything is possible sort of thing, I would agree with  
 12 you. Generally that was the tenor of your question,  
 13 and I would expect that that would be generally the  
 14 tenor of the answer.

15 MR. BALLANTINE: We'll go one step further. You  
 16 have made clear time after time after time in various  
 17 other fora and here today that one of your bases is  
 18 that you have an inadequate basis on which to represent  
 19 your client.

20 MR. DeMOISEY: That's more of why I'm  
 21 agreeing to go with that. That is a real problem as  
 22 far as I can see. Obviously once the privilege is  
 23 waived with a particular question, it's gone. So  
 24 again, as I was attempting to be cautious in terms of  
 25 what I looked at and what I didn't, I'm exercising that

1 same caution here.

2 MR. BALLANTINE: Okay. I think that adequately  
 3 protects you and me in terms of presenting to the  
 4 court.

5 MR. DeMOISEY: For the purpose of going to  
 6 the court and saying 'we have these problems', I have  
 7 no problem with that.

8 Q. All right. Let me -- I do need to ask you a  
 9 few questions to follow up on the question of the  
 10 narrative that you've answered some questions about,  
 11 the one that Mr. DeMoisey returned to the Wyatt firm  
 12 with his September 22 letter. Let me also say at the  
 13 outset of this series of a few questions, I have not  
 14 seen the narrative other than to see the binding in  
 15 which it is held, but I have not read it. I have not  
 16 seen any of its contents. Mr. DeMoisey has not seen  
 17 it. In these following questions which I'm about to  
 18 ask, I want it clear to you that I have no authority to  
 19 waive the attorney-client privilege as it relates to  
 20 the information that is in that narrative. I also want  
 21 to make it clear that in my questioning I'm not  
 22 intending to nor implicitly waiving that privilege.  
 23 But I do need to find out a few facts relating to the  
 24 preparation of the narrative. And I will try to phrase  
 25 my questions in such a way that you can answer without

1 revealing the information or the contents of any of the  
 2 sources from which you prepared the narrative. But I  
 3 specifically do not want you in answer to one of my  
 4 questions to blurt out, 'well, such-and-such a document  
 5 said this' or 'I saw documents that said that'. I'm  
 6 not after that, and I don't want that. And I don't  
 7 want it in this record, because that creates a whole  
 8 new set of problems. We've got enough in this case as  
 9 it exists. Now, with that broad form general  
 10 statement, let me get to you some specific questions.  
 11 On what, that is, what kind of mechanical device or  
 12 electronic device or whatever, was the narrative  
 13 prepared?

14 A. If we are talking about a narrative which I  
 15 wrote, that narrative that I'm familiar with is  
 16 prepared on a word processor or a typewriter word  
 17 processor machine.

18 Q. All right. Hearing your prefatory comment, I  
 19 want to make clear that I'm asking you about the  
 20 narrative that -- that is described in your lawyer's  
 21 September 22, 1993, letter to Greg Haynes at the Wyatt  
 22 firm in which, and I've quoted this earlier, but for  
 23 purposes of these follow-up questions, I want to make  
 24 sure we're talking about the same narrative, the same  
 25 document. To that end -- this is from your lawyer's

1 letter to Greg Haynes. "To that end my client has  
 2 drafted a narrative by which he tells me he has,  
 3 quotes, put all the pieces together, close the quotes.  
 4 I have not read this narrative. My client tells me  
 5 that the narrative refers, paren, quotes, question  
 6 mark, footnotes, question mark, close paren, to  
 7 documents in, quotes, the box. The sealed narrative is  
 8 enclosed herewith." For previous questions and these  
 9 follow-ups I'm referring to that narrative as it is  
 10 referred to in that letter. You understand that?

11 A. I understand that.

12 Q. All right. And that's the one that was  
 13 prepared on the word processor?

14 A. If we have a narrative before us and we have  
 15 someone in this room perhaps who has read the narrative  
 16 or someone that you know has read the narrative which  
 17 is not unclear as I know anyone in this room and I  
 18 could make a statement based on what I saw before me,  
 19 that narrative would be what you are discussing or  
 20 you're asking questions on. I would answer to that.

21 Q. I'm not asking you about what documents I may  
 22 or may not have or my client may or may not have unless  
 23 that be misunderstood. I don't have a narrative, the  
 24 narrative, any narrative, period. I'm asking you about  
 25 the narrative that your lawyer referred to on September

1 22, 1993, and the narrative about which you answered  
2 earlier questions. And having said that and with your  
3 add-ons there, I'm not sure of your answer. Was the  
4 narrative referred to in that September 22 letter the  
5 one prepared on your word processor, a word processor?

6 A. The narrative that you referred to earlier  
7 was prepared on a word processor.

8 Q. Who owns that word processor?

9 A. I do.

10 Q. Is it at your home?

11 A. Yes, it is.

12 Q. Is this - I don't know enough word processor  
13 language to be sure I'm going to hit the right word,  
14 but is there in that word processor on which the  
15 narrative was prepared - prepared, excuse me, the  
16 capability of your giving it a series of commands and  
17 having it print again another copy of the same  
18 narrative?

19 A. Not likely. The computer crashed, and there  
20 is nothing on it. Not my computer. There is nothing  
21 on it other than there might be a couple of letters  
22 that were written or something that I put on it.

23 Q. So if I've understood what you just said,  
24 something occurred to that word processor that has  
25 caused the information that was typed out into the

1 narrative to be gone?

2 A. I - to what extent that narrative that  
3 you're referring to was ever saved, it's no longer  
4 there.

5 Q. Okay.

6 A. But there are numerous reasons for that as  
7 you know.

8 Q. Well, I - yes, I understand there are many  
9 reasons that can happen. The key point I'm trying to  
10 get to is that your testimony right now is that it is  
11 gone from that word processor?

12 A. There was nothing on it of that nature.

13 Q. And to your knowledge does there exist in  
14 some sort of retrievable form anywhere other than the  
15 narrative which Mr. DeMolisey returned to the Wyatt firm  
16 and your copy, does there exist any other source from  
17 which the narrative itself could be reproduced?

18 A. Not to my knowledge, no.

19 Q. Do you know - do you still have in your -  
20 at your home the word processor that this was prepared  
21 on?

22 A. Yes, I do.

23 Q. What is its brand?

24 A. I - I really don't know the name of the  
25 brand. It's very old.

1 Q. Did - but - well, you just answered that  
2 you still have it. I would ask, sir, that you - when  
3 you get home, that you look at the label or face plate  
4 or whatever it is and identify what it is and notify  
5 Mr. DeMolisey. And, Fox, in turn will you let us know  
6 the identifying data on the word processor?

7 MR. DEMOLISEY: Yes.

8 Q. Sir, in your - do you know enough about it,  
9 the word processor, to know if it had a memory system  
10 or a hard disk or a floppy disk or anything of that  
11 nature?

12 A. Yes, it has a hard disk.

13 Q. It has a hard disk?

14 A. But I am not computer knowledgeable. I know  
15 very little about it. I just use my computer as a word  
16 processor.

17 Q. I started to say welcome to the club, but you  
18 went one step too far, and I'm not in that club even.  
19 But it has a hard disk. And if I understood, putting  
20 all these questions and answers together, if the  
21 narrative was ever on that hard disk, it's not there  
22 now, is that correct?

23 A. That's correct.

24 Q. One moment. When you delivered to Mr.  
25 DeMolisey the narrative that he forwarded to Wyatt on

1 September 22, did it have within its clips or binding  
2 or covers or whatever you want to say that held it  
3 together, did it have in its entirety all of the pages  
4 and footnotes and references that existed in the  
5 narrative of which you have a copy?

6 A. The - Judge Sarokin's opinion and a frank  
7 statement to smokers, the 1954 article which is in the  
8 New York Times -

9 Q. Okay. Wait a minute. We may - fortunately  
10 it's in the New York Times. I don't want to get into  
11 specific things. All I'm asking is, first, did it  
12 contain - the one you gave to him contain everything  
13 that is in your copy?

14 A. That's what I'm answering to, and I have to  
15 specifically point out that -

16 Q. Let me interrupt. The question just takes a  
17 yes or a no. Did it have everything or not, yes or  
18 no? Then we'll worry about what it was that is not in  
19 it or is in it.

20 A. I can't answer that yes or no. I mean, you  
21 asked me a comparison between a copy that I have -

22 Q. Right.

23 A. - custody of.

24 Q. And the one that you turned over to him. And  
25 my question is simply did the one you turned over to

1 him have everything with it and in it that you have in  
2 your copy at home or wherever it is?

3 A. Well, quite frankly, I'd have to make a  
4 comparison. And on that basis, again, I refer to an  
5 opinion by a judge in -

6 MR. JONES: No.

7 A. It's part of your answer.

8 MR. JONES: It really isn't.

9 A. You may want to exclude.

10 MR. DeMOISEY: Actually it's part of his  
11 answer. It may not be responsive to your question.

12 MR. BALLANTINE: Yeah.

13 MR. DeMOISEY: It is part of his answer. I  
14 guess we're kind of stuck with either you want his  
15 answer or you don't.

16 MR. BALLANTINE: I want an answer just yes or no.  
17 I haven't asked what is in one or the other.

18 MR. DeMOISEY: What I heard was that in order  
19 to answer that question he was going to have to  
20 compare, I guess?

21 A. That's exactly it.

22 Q. Now, the - with reference to...

23 MR. DeMOISEY: I think I would point out, as  
24 we have already seen, Doctor Williams is quite  
25 meticulous in terms of comparing quotes and things. So

1 I think within that context it seems to me that's where  
2 he's answering from. And I'm making that observation.

3 Q. Well, the - what came out before I

4 interrupted him was, as I was hearing it was there was  
5 an opinion of Judge Sarokin. And I don't know and I  
6 don't want to know and I'm not asking, but that there  
7 is - an opinion of Judge Sarokin was in one of the  
8 other of the documents but perhaps not in both and he's  
9 not sure without comparing. Secondly, there was  
10 something referring to an article in the New York Times  
11 that may be in one but not in the other, but he would  
12 have to compare to be sure. Now, those two things  
13 obviously are not within any confidential realm that I  
14 can imagine. But I wanted to stop him, because I don't  
15 want an inadvertent - as I said at the very beginning  
16 of this line of questioning, I did not want any  
17 reference to specific materials. And I was simply  
18 trying to find out the answer to the question. And I  
19 accept his answer, that he would have to compare. I do  
20 ask, however, that for purposes of this litigation and  
21 subject - pending any further order of the court to  
22 the contrary, that you instruct your client not to add  
23 to or take away from his copy of that narrative until  
24 there is an opportunity to make a comparison if one or  
25 the other of the sides want to do that, so that we

1 preserve intact what he's got, we preserve intact what  
2 my client has, and then when, as and if the court  
3 orders that one or the other side can do it, we have  
4 the two narratives for purposes of comparison if that  
5 be required.

6 A. Well, beyond this I don't really see any -

7 MR. DeMOISEY: Could I make this suggestion?  
8 I don't have a problem with following your suggestion.  
9 On the record so it would be clear, if acceptable to

10 you and to your client, I would ask my client to, much  
11 as he did with the box and the first narrative, to  
12 bring to my office the - this - the copy that he has  
13 sealed in an envelope, and I'll have my staff sign over  
14 the top of the flaps and what-not, and I'll keep that  
15 in my possession signed. And if you want to sign it,  
16 too, I'm happy to do that, so that there won't be any  
17 question that there have not been any additions or  
18 deletions or whatever to the draft that he has.

19 MR. BALLANTINE: I think that's a very reasonable  
20 approach to it, and I would ask that that be done.  
21 Will you accomplish that, sir?

22 A. Yes.

23 MR. BALLANTINE: Okay. And then when you've got  
24 it, give me a call and I will come do it, because in  
25 the context of this case I think you and I both want

1 that kind of protection.

2 MR. DeMOISEY: I have no problem with that.

3 Q. Just a few more questions here. Since you  
4 turned over to Fox on or before September 22 the  
5 narrative that he sent to the Wyatt firm, have you done  
6 any editing or any work at all to change in any way the  
7 narrative that you have, the copy of the narrative that  
8 you have?

9 A. No.

10 Q. How was - how were the two copies made? Was  
11 one copy printed out via - or typed out via the word  
12 processor and then a photocopy made, or were they just  
13 both typed out from the word processor?

14 A. They were photo - a photocopy was made of  
15 that.

16 Q. Sir?

17 A. A photocopy.

18 Q. Where? At a Kinko or some place like that?

19 A. Something like that.

20 Q. And no original was left wherever that was  
21 done. You took your original and the photocopy back  
22 with you?

23 A. That's approximately true. I'm not really  
24 sure at this point.

25 Q. But making sure that I don't leave any stone



1 unturned, to your knowledge, the typed out via the word  
2 processor version or copy of the narrative and the  
3 photocopy made from it are the only two that were or  
4 are in existence?

5 A. Right. Let's assume, however, that for the  
6 purposes of drafts that might occur, there might have  
7 been others hypothetically that were torn up in the  
8 process. Now, that is quite normal in the construction  
9 of any kind of work that you're doing. That's it  
10 basically.

11 Q. I understand.

12 A. So if it runs off the machine, it might  
13 get -

14 Q. To your knowledge as we sit here today are  
15 there in existence any - either on the word processor  
16 system or elsewhere any copies of data - strikes that  
17 - any copies of any of those drafts?

18 A. Not to my knowledge, no.

19 Q. I gave you an example of Kinke's, and you may  
20 have covered this in your answer. Do you have any  
21 recollection of where you made the copy?

22 A. I do not.

23 Q. Do you know if you gave to Fox the photocopy  
24 or the word processor typed one?

25 A. Well, we're getting into a question of which

1 is which. I don't know. As I say, there could be a  
2 torn-up draft at one point. I don't really recall.  
3 I'd have to see both copies here and say this one is  
4 this and that one is that. I don't know.

5 Q. That gives a different cast to what I had  
6 understood your earlier answer. I thought there was  
7 the narrative that Fox returned to Wyatt and that there  
8 was either the word processor produced original from  
9 which that photocopy was made or reverse. What you  
10 just said leads me to a concern that one or the other  
11 of you may have a word processor produced or photocopy  
12 of a draft.

13 MR. DeMOISEY: One or the other of us?

14 MR. BALLANTINE: Yes. Well, not you. Not you.

15 MR. DeMOISEY: Maybe I misunderstood. I  
16 thought he said I had an original, I had a copy, and I  
17 don't know which one ended up in Wyatt, Tarrant, and I  
18 couldn't tell without looking at them.

19 MR. BALLANTINE: That was my initial  
20 understanding.

21 MR. DeMOISEY: Okay. Is that not right?

22 Q. Then he threw in something as torn-up copies  
23 of the draft.

24 A. I'm talking about drafts that come off the  
25 machine, which you will, you know, you print a copy as

1 it comes off the machine, and that's what it is. And  
2 then you were asking about copies. And I answered that  
3 to my knowledge that was the only existing unless  
4 somebody pieced together a draft somewhere. And I had  
5 torn up any kind of drafts that I had.

6 Q. You have torn up? Did you say you have torn  
7 up?

8 A. I have made - if there was a draft that was  
9 not useful to me, I did destroy it, yes.

10 Q. And didn't send those to other people  
11 perchance?

12 A. No.

13 Q. For other people to review?

14 A. I haven't sent them.

15 Q. Coming back, because your lawyer and I had  
16 the same impression of your answers, is it true that to  
17 your knowledge there are in existence today only two  
18 versions of the draft - excuse me, the narrative, the  
19 one you delivered to Fox in September or in or about  
20 September 22, 1993, and the one of which you have a  
21 copy?

22 A. In existence as it is, that is true.

23 Q. Are there in existence any other copies or  
24 forms of that narrative as earlier drafts or  
25 photocopies of earlier drafts to your knowledge?

1 A. Not that I know of.

2 Q. To - you have said you don't remember where  
3 the photocopy was made. To see if this refreshes -  
4 and I - let me restate my question. Specifically do  
5 you remember if or not you made a photocopy of the  
6 narrative at Brown & Williamson, at the facility where  
7 you were working?

8 A. A photocopy of what?

9 Q. Of the narrative.

10 A. No. That would not have... (Conferring off  
11 the record with Mr. DeMoisey).

12 MR. DeMOISEY: Maybe I'm confused. If I  
13 understood the question, you're asking was a copy made  
14 of the narrative at Brown & Williamson?

15 MR. BALLANTINE: In that physical location, yes.  
16 He was employed by Wyatt and worked at the Brown &  
17 Williamson facility where that work was going on. And  
18 my - he had said he didn't remember where the  
19 photocopy of the word processor produced narrative was  
20 done. And I was asking for purposes of getting  
21 specific as to one location was it made by him or  
22 anyone else at that physical location at Brown &  
23 Williamson where he was working during that period of  
24 time.

25 A. Well, as I have indicated on whatever you

1 have since nobody's read it, it says working draft in  
2 1992 or '93. I left Wyatt at April 1st of 1992. I  
3 believe the working draft is in '93. It would not have  
4 been possible for me to have made a copy of anything at  
5 that particular time.

6 Q. So the answer's no?

7 A. That is true.

8 Q. To your recollection -- as we sit here today  
9 to your recollection did you remove from the narrative  
10 that you turned over to Fox any of the pages that were  
11 in that narrative?

12 A. No.

13 Q. Just a second. With reference to the copy of  
14 the narrative over which you have possession, custody  
15 or control, does anyone else have access to that  
16 document?

17 A. No, I wouldn't think so.

18 Q. Well, specifically I'm -- I'm thinking if  
19 it's in a desk drawer at home, your spouse or children  
20 or somebody, whether intentionally or otherwise, may  
21 inadvertently have access. In the scope of the  
22 question I must -- maybe it wasn't artfully phrased --  
23 if someone wanted to, could someone else go wherever it  
24 is located and pick it up?

25 A. No, I don't think so. I can't -- I can

1 visualize certain circumstances where that would  
2 happen, but no, I don't think so.

3 Q. I think I asked you earlier and I don't  
4 remember -- well, I don't remember if I asked you.  
5 Where is the copy over which you have possession,  
6 custody or control?

7 MR. DeMOISEY: This -- in terms of that  
8 particular question, with the agreement that we have on  
9 the record that he's very shortly going to bring it in  
10 sealed and whatever, this goes back to a concern I know  
11 that he has had. We would rather not answer that  
12 question at this point in time simply for security  
13 reasons and certainly because it's very shortly going  
14 to be in a position where you will know exactly what it  
15 is.

16 MR. BALLANTINE: Okay

17 MR. DeMOISEY: I would voice that objection.

18 Q. I'll accept that with some follow-up  
19 questions or commitments. Number one, how soon can you  
20 get this narrative to Fox?

21 A. What -- it might take -- oh, within a day or  
22 so. It doesn't really -- unless you're in a hurry.

23 Q. Well, it's about -- it's going on 1:30 on  
24 Wednesday, October 6. I would ask that you deliver it  
25 by 1:30 tomorrow. Is that feasible?

1 A. Sure.

2 Q. All right. Second question, do you agree not  
3 to make any photocopies, reproductions or other copies  
4 of that document but to turn it over in its presently  
5 existing state to Fox without any changes, alterations,  
6 removals or otherwise?

7 A. Sure.

8 MR. JONES: I'm sorry. Was there an answer?

9 MR. BALLANTINE: Yeah. He said sure.

10 MR. JONES: Okay. Thank you.

11 MR. SMITH: When you get through, I want to  
12 say something on the record.

13 MR. BALLANTINE: Okay.

14 (COMMENTS OFF THE RECORD)

15 MR. BALLANTINE: I have nothing further, but  
16 co-counsel has either a statement or some questions.  
17 I'm not sure which.

18 MR. SMITH: I simply wanted to state for the  
19 record that because of the nature of this deposition  
20 and the circumstance that counsel is in, counsel for  
21 Mr. Williams is in, we have been unable to obtain a  
22 great deal of information that we believe necessary to  
23 protect our -- the property of Brown & Williamson and  
24 the rights of Brown & Williamson and that we are  
25 adjourning this deposition only so long as we -- it

1 takes us to move in front of the appropriate forum to  
2 seek to compel answers and that we are by no means  
3 concluded with the deposition and obviously reserve our  
4 right to continue it at such time as we are able to get  
5 appropriate orders with regard to the testimony of Mr.  
6 Williams.

7 MR. BALLANTINE: Yeah. I had certainly understood  
8 that as a given. But I certainly incorporates that.

9 MR. DeMOISEY: In that vein, I certainly  
10 appreciate that posture and without trying to be overly  
11 obstructionalist, I've been trying to be as cooperative  
12 as I can under the constraints of the circumstance.  
13 But because of the importance of where those issues of  
14 compulsion are going to go, I'm going to have to at  
15 least advise and request -- I don't know that I'm in a  
16 position to demand, but I'm going to have to request  
17 and will object later on if adequate notice of  
18 subsequent motions and things are not given. And I  
19 don't mean to say that I don't recognize the immediate  
20 problem, but I just want you to know that I'm not going  
21 to be able to comply as quickly as I have in the past  
22 at every possible turn, number one. Number two, that  
23 as these things get a little more complicated and  
24 what-not, we likewise are going to be moving along  
25 towards protecting Mr. Williams' rights. And I would

1 hope at least to the extent that we have to the - that  
2 we've been able to achieve today and with Mr. Williams'  
3 agreement that he's going to produce into my custody  
4 the narrative, that some of the urgency might be  
5 alleviated at this point. And I just don't want to be  
6 swept away by the current of this thing simply because  
7 your time line and my time line might be something  
8 different.

9 MR. SMITH: Couple of responses to that.  
10 First of all, the emergency nature of the relief we  
11 need has not changed one whit because your client now  
12 says he's going to put a - give his only copy to you  
13 because we have yet to get answers to the questions  
14 that the judge clearly indicated that we should get  
15 answers to with regard to activities before the  
16 temporary restraining order was put in place. Secondly,  
17 because of the position that your client has put my  
18 client in, all of us are, in fact, swept up in this.  
19 And we are going to take whatever action that we need  
20 to take as quickly as we need to take it to protect my  
21 client's rights keeping in mind as best we can the  
22 schedule of counsel and all of our lives in general. I  
23 will say that. But I must also say that we're not  
24 going to delay, because the time is a problem. We're  
25 going to have to move very quickly on this. My only

1 point that I was making, however, about the  
2 continuation of the deposition is I don't want a  
3 contention to be made that Brown & Williamson has  
4 waived anything by failing to ask the list of questions  
5 that I have here to ask the witness, because based on  
6 the answers given to counsel for Wyatt and the general  
7 statement that questions of that type, the type  
8 described in colloquy would not be answered, I do not  
9 think that it would be advantageous to anyone here for  
10 me to go through a litany of questions and receive  
11 objections and Fifth Amendment responses. I do have  
12 many things that, as you might imagine, I would ask. I  
13 just simply don't want there to be any contention that  
14 'Brown & Williamson didn't see fit to ask my client  
15 anything at the deposition'.

16 MR. DeMOISEY: You have raised the point -

17 MR. SMITH: I think you would take that  
18 position. I want the record made absolutely clear that  
19 we do want to continue the deposition. We do have  
20 many, many things to ask the witness and would intend  
21 to do so at the continuation of the deposition at an  
22 appropriate time.

23 MR. DeMOISEY: I have no problem with that.

24 A. (Conferring off the record with Mr.  
25 DeMoisey).

1 MR. BALLANTINE: You need anything further?

2 MR. DeMOISEY: No.

3 MR. BALLANTINE: I - I believe that I would like  
4 to request review and signature in this case of this  
5 deposition.

6 MR. DeMOISEY: That probably would be a good  
7 idea just because there are lots of nots and buts and  
8 make sure we have it - absolutely have a very correct  
9 answer.

10 MR. BALLANTINE: So you can process in that format  
11 in that procedure.

12 THE REPORTER: Okay.

13 MR. BALLANTINE: Anything further from anybody?

14 MR. DeMOISEY: (Shakes head negatively).

15 MR. BALLANTINE: Deposition adjourned.

16 (WITNESS EXCUSED AT 1:25 P.M.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 I, MERRELL WILLIAMS, JR., Ph.D., certify that  
2 I have read the foregoing typewritten transcript of my  
3 oral answers to questions propounded to me and that  
4 said typewritten transcript of my answers is true and  
5 correct with the exception of any notations which I  
6 have indicated and initialed.  
7  
8

9 Merrell Williams, Jr., Ph.D.

10 Subscribed and sworn to before me this the  
11 day of , 1993.  
12  
13

14 NOTARY PUBLIC  
15

16 My commission expires  
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25

1 STATE OF KENTUCKY  
2 COUNTY OF JEFFERSON

3  
4 I, NANCY L. NUNNELLEY, Notary Public, State  
5 of Kentucky at Large, do hereby certify that the  
6 foregoing deposition of MERRILL WILLIAMS, JR., Ph.D.,  
7 was taken at the time and place stated in the caption;  
8 that the appearances were as set forth in the caption;  
9 that prior to giving his testimony the witness was  
10 first duly sworn by me, that said testimony was taken  
11 down by me in stenographic notes and thereafter reduced  
12 under my supervision to the foregoing 108 typewritten  
13 pages and that said typewritten transcript is a true,  
14 accurate and complete record of my stenographic notes  
15 so taken.

16 I further certify that I am not related by  
17 blood or marriage to any of the parties hereto and that  
18 I have no interest in the outcome of captioned case.

19 My commission as Notary Public expires July  
20 10, 1996.

21 Given under my hand this the 6th day of  
22 October 1993, at Louisville, Kentucky.

23  
24  
25

\_\_\_\_\_  
NOTARY PUBLIC